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Tax Compliance and the Reformed IRS

Leandra Lederman[*]

I. INTRODUCTION

Tax evasion is both costly to the government and complicated to combat.[1] Even noncompliance by individuals with the federal income tax consists of a number of distinct problems,[2] though for ease of analysis, most of it can be grouped into three general categories:[3] (1) failure to file a required tax return[4] (filing noncompliance),[5] (2) failure to

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1. *See* JOINT COMMITTEE ON TAXATION, REPORT OF THE JOINT COMMITTEE ON TAXATION RELATING TO THE INTERNAL REVENUE SERVICE AS REQUIRED BY THE IRS REFORM AND RESTRUCTURING ACT OF 1998, JCX-38-02, 34 (May 10, 2002), LEXIS, 2002 TNT 93-18 [hereinafter JOINT COMMITTEE REPORT] (reporting the IRS estimate of a $166.4 billion federal income "tax gap" for 1998). The corporate income tax gap was estimated to be another $40.5 billion. *Id.*

2. Some of many possible examples include falsifying information on W-4 forms, *see* http://www.irs.gov/pub/irs-fill/fw4_03.pdf (last visited Apr. 6, 2003), so as to reduce withholding; altering the tax return form itself, sometimes in subtle ways so as to mislead the IRS; *see*, for example, Beard v. Commissioner, 82 T.C. 766, 779 (1984); and fraud such as falsely swearing that children reside with the taxpayer, so as to receive an earned income credit or increase its amount, *see* Leslie Book, *The Poor and Tax Compliance: One Size Does Not Fit All*, 51 U. KAN. L. REV. 1145, 1155 (2003).

3. The American Bar Association Commission on Taxpayer Compliance listed four categories of noncompliance: (1) "failure to file returns;" (2) "under-reporting of income;" (3) "overstating deductions, credits and adjustments;" and (4) "failure to pay established liabilities." ABA COMM. ON TAXPAYER COMPLIANCE, REPORT AND RECOMMENDATION ON TAXPAYER COMPLIANCE, 41 TAX LAW. 329, 330 (1987) [hereinafter ABA COMMISSION REPORT]. The second category specified in this article encompasses the second and third categories listed in the ABA Commission Report.

4. An IRS research study estimates that over 50 million required tax returns are not filed each year. Only a small fraction of these cases can be worked, and most will either result in a refund to

report on a filed return all taxes owed (reporting noncompliance),[6] and (3) failure to pay over to the government taxes admittedly owed (payment noncompliance).[7]

Traditionally, enforcement has been used to combat noncompliance.[8] However, Congress determined that the IRS was overzealous, and passed the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA '98).[9] RRA '98 wrought enormous changes at the IRS, including a renewed focus on taxpayer rights[10] and "customer" service.[11]

Some have argued that a kinder, gentler IRS might increase taxpayer willingness to pay taxes voluntarily.[12] In addition, a number of scholars

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the taxpayer—as a result of tax withholding or the earned income tax credit—or in little extra tax collected.

George Guttman, *What Would an Adequately Funded IRS Look Like?*, 97 TAX NOTES 36, 37 (2002).

5. *Cf.* Alan H. Plumley, *The Determinants of Individual Income Tax Compliance: Estimating the Impacts of Tax Policy, Enforcement, and IRS Responsiveness*, INTERNAL REVENUE SERV. PUBL'N No. 1916, 7 (1996) ("The IRS recognizes three type of voluntary compliance: *filing compliance* . . . *reporting compliance* . . . and *payment compliance*.") (emphasis in original).

6. *Cf. id.*

7. *Cf. id.* This is an important category. *See* ABA Commission Report, *supra* note 3, at 367 (discussing the fact that 35–40% of the IRS's delinquent accounts involve uncollected trust fund taxes).

8. *See* Remarks of Shirley D. Peterson, Commissioner of Internal Revenue, Federal Bar Association Tax Law Conference, Washington, D.C. (March 6, 1992), *reprinted at* 1992-SPG Fed. B.A. Sec. Tax'n Rep. 1, 2 ("Traditionally, Compliance—spelled with a capital 'C'—has meant the enforcement activities such as examination, collection, criminal investigation, and litigation."); *cf.* Charles O. Rossotti, *Modernizing America's Tax Agency*, 83 TAX NOTES 1191, 1195 (1999) ("Historically, the IRS placed great emphasis on direct enforcement revenue, in part because it is precisely measurable and in part because it showed an indirect deterrent effect that increases compliance.").

9. Pub. L. No. 105-206, 112 Stat. 685 [hereinafter RRA '98]. RRA '98 was widely supported. Its original co-sponsors were Representatives Benjamin L. Cardin, a Democrat, and Rob Portman, a Republican. It ultimately had 43 co-sponsors, 19 Democrats and 24 Republicans. It passed in the House by a vote of 402 to 8 and in the Senate by a vote of 96 to 2. Subsequent to enactment, many of the "horror stories" recounted in the hearings were found to be unfounded or exaggerated. GENERAL ACCOUNTING OFFICE, OFFICE OF SPECIAL INVESTIGATIONS, GAO REPORT ON ALLEGATIONS OF IRS TAXPAYER ABUSE (May 24, 1999), LEXIS, 2000 TNT 80-13; *see also Conference Panel Ponders Finance Hearing Horror Stories*, 83 TAX NOTES 1854, 1854 (1999).

10. *See*, Pub. L. No. 105-206, 112 Stat. 685 §§ 3001 et. seq. (Taxpayer Bill of Rights 3, further amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act, Pub. L. No. 105-277, 112 Stat. 2681 (1999), Amendment in div. J., sec. 4002(d)-(e) at 112 Stat. 2681-906).

11. The use of the euphemism "customer" is discussed below. *See infra* notes 99–102 and accompanying text.

12. *See, e.g.*, Rossotti, *Modernizing America's Tax Agency*, *supra* note 8, at 1195 ("Historically, the IRS placed great emphasis on direct enforcement revenue . . . . However, there are many techniques other than direct enforcement that increased compliance at the IRS and elsewhere, such as better and more targeted taxpayer education, better reporting, voluntary agreements, improved regulations, and earlier intervention through notices and phone calls."); David Cay Johnston, *Tax Professionals See Pitfalls in the New I.R.S.*, N.Y. TIMES, July 18, 1999, at 21 ("Joel A. Goverman, who is in charge of revising I.R.S. collection strategies, said: 'We are emphasizing customer service and working with the taxpayer to come to the proper resolution. . . . [W]e believe that taking hard immediate action will result in our ending up collecting less

have stated that enforcement does not explain the overall rate of voluntary compliance with the individual federal income tax, generally estimated at approximately 83%.[13] That is, penalties generally amount to 20% or 75% of unpaid tax,[14] which is insufficiently low to explain compliance in economic terms,[15] given that the audit rate for individuals is below 1%.[16] These scholars have argued that other factors are at play

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money.'"); *Oral History Interview*, 14 VA. TAX REV. 429, 453 (1994) (quoting former Commissioner Mortimer Caplin as saying "[W]e were saying, 'How can we show that we're getting better compliance by this more cooperative and softer approach, this courteous approach?'"); ABA Commission Report, *supra* note 3, at 354–55. ("To improve taxpayers' cooperation with the Internal Revenue Service and increase their willingness to comply, we recommend that the Service take a more active role in educating taxpayers and providing assistance to those who need it. The recently announced reorganization of the Internal Revenue Service's structure to place greater emphasis on taxpayer service is a promising step in this direction."). *Id*.

13. *See* James Andreoni, et al., *Tax Compliance*, 36 J. ECON. LIT. 818 (1998); *cf.* Robert E. Brown & Mark J. Mazur, *The National Research Program: Measuring Taxpayer Compliance Comprehensively*, 51 U. KAN. L. REV. 1270 app. (2003) (estimating 84.5% rate of timely voluntary compliance with respect to all federal taxes).

14. *See* I.R.C. § 6662 (20% penalty for, among other things, substantial underpayment of tax, negligence or disregard of rules or regulations); *id.* § 6663(a) (75% penalty for fraud). Criminal sanctions are rarely imposed. In 1981, for example, fewer than .1% of IRS investigations and audits were prosecuted criminally. Jonathan Skinner & Joel Slemrod, *An Economic Perspective on Tax Evasion*, 38 NAT'L TAX J. 345, 348 (1985). According to the IRS, the figure for all IRS prosecutions for the year (including those for narcotics-related financial crimes) is in the low four digits. *See, e.g.*, INTERNAL REVENUE SERVICE: PROGRAM, BY STATUS OR DISPOSITION FY 2002—CRIMINAL INVESTIGATION (CI), *at* http://www.irs.gov/irs/article/0,id=107483,00.html (last visited May 4, 2003); *see also* Leandra Lederman, *The Interplay Between Norms and Enforcement in Tax Compliance*, 64 OHIO ST. L.J. (forthcoming 2003) (reporting more IRS data). Those figures are a small fraction of the more than 100 million individual income tax returns filed annually. *See* INTERNAL REVENUE SERVICE: SUMMARY OF NUMBER OF RETURNS, BY TYPE OF RETURN, FISCAL YEARS 2000 AND 2001 (2002), *available at* http://www.irs.gov/pub/irs-soi/01db02nr.xls (last visited Apr. 1, 2003); INTERNAL REVENUE SERVICE: PROJECTIONS OF RETURNS TO BE FILED IN CALENDAR YEARS 2001-2008 (2002), *available at* http://www.irs.gov/pub/irs-soi/08rs01pr.pdf (last visited Apr. 1, 2003).

15. That is, the expected sanction of any particular tax evader is very low, so a rational taxpayer comparing the costs of compliance with the expected costs of evasion would find compliance irrational, absent extreme risk aversion or other idiosyncratic factors. Lederman, *supra* note 14.

16. In fiscal year 2000, the overall audit rate for individuals was .49%. INTERNAL REVENUE SERVICE, STATEMENT BY IRS COMMISSIONER CHARLES O. ROSSOTTI ON AUDIT AND COLLECTION ACTIVITY FOR FISCAL 2000 (Feb. 15, 2001), LEXIS, 2001 TNT 33-11 [hereinafter AUDIT AND COLLECTION ACTIVITY STATISTICS FOR FISCAL 2000]. For individuals with $100,000 or more of income it was .96%. *Id.* Both of these audit rates declined every year between 1996 and 2000. *See id.*; *see also infra* note 73.

These figures reflect only IRS contacts with taxpayers that are officially categorized as audits. However, math error notices and return matching are similar to correspondence audits. *See* JAMES R. WHITE, GENERAL ACCOUNTING OFFICE, UNITED STATES GENERAL ACCOUNTING OFFICE REPORT TO THE CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT, COMMITTEE ON WAYS AND MEANS, HOUSE OF REPRESENTATIVES: IRS AUDIT RATES (Apr. 2001), LEXIS, 2001 TNT 105-31. Counting as audits a wider variety of IRS contacts would increase the figures substantially but they would nonetheless remain low. *See* George Guttman, *Current Audit Statistics Make IRS Look Less*

in determining tax compliance.[17] They have looked to such things as taxpayer morale,[18] trust in government,[19] and the use of tax compliance as a signal.[20]

In fact, this simple comparison of relatively high rates of voluntary compliance rates with relatively low audit rates and penalties is flawed because it does not account for the role of information reporting and withholding in constraining the opportunity to evade tax.[21] Withholding essentially puts third parties in charge of paying the taxpayer's taxes to the IRS[22] and eases the psychological burden that would be associated with writing a check for the full year's taxes to send in with the tax

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Effective Than It Is, 90 TAX NOTES 1593, 1597 (2001) (overall audit rate for 1999 would increase from .89% to 3.8%).

17. *See* Joseph Bankman & Thomas Griffith, *Social Welfare and the Rate Structure: A New Look at Progressive Taxation*, 75 CAL. L. REV. 1905, 1942 & n.169 (1987) (asserting that "[i]t seems reasonable" to attribute some compliance unexplained by the economic model to such things as the "moral and social costs of dishonesty and the transaction costs of enduring an audit"); Robert Cooter & Melvin A. Eisenberg, *Norms & Corporate Law: Fairness, Character, and Efficiency in Firms*, 149 U. PA. L. REV. 1717, 1725 (2001) ("[T]he punishment for tax evasion in most countries, discounted by the probability of prosecution and conviction, is small relative to the gain. Whereas economic models of self-interest predict low rates of tax compliance, some countries, like the U.S. and Switzerland, enjoy high rates of tax compliance."); Dan M. Kahan, *Signaling or Reciprocating? A Response to Eric Posner's* Law and Social Norms, 36 U. RICH. L. REV. 367, 377 (2002) ("Tax compliance rates—which vary dramatically across nations—seem to bear no connection to enforcement levels. For example, tax cheats face a much higher expected penalty in many European nations than they do in the United States, yet the United States enjoys a higher compliance rate."); Eric Posner, *Law and Social Norms: The Case of Tax Compliance*, 86 VA. L. REV. 1781, 1782 (2000) ("A widespread view among tax scholars holds that law enforcement does not explain why people pay taxes.").

18. *See* Bruno S. Frey & Lars P. Feld, *Deterrence and Morale in Taxation: An Empirical Analysis* at 7; CESifo Working Paper Series No. 760 (Aug. 2002), *at* http://papers.ssrn.com/so13/papers.cfm?abstract_id=341380 (empirical analysis in their paper "offers a perspective seldom taken into consideration with regard to the issue of tax compliance: Deterrence is only one of the motivational forces in getting people to pay their taxes. Quite another is the set of policies available to the tax authority to bolster taxpayers' morale.").

19. Lars P. Feld & Bruno S. Frey, *Trust Breeds Trust: How Taxpayers are Treated*, Univ. of Zurich Inst. for Empirical Research in Econ. Working Paper No. 322 (2002); *see generally* Frey & Feld, *supra* note 18.

20. *See* Posner, *supra* note 17, at 1782.

21. *Cf.* Kent W. Smith, *Integrating Three Perspectives on Compliance: A Sequential Decision Model*, 17 CRIM. JUST. & BEHAV. 350, 359 (1990) ("A general conclusion from the large amount of research on deterrence effects is that deterrence factors generally evidence weaker effects than do normative orientations and expectations of significant others . . . . Most studies, however, have not controlled for the subjective importance of the decisions or such situational factors as structural opportunity that may affect the fullness of the analytical decision process.") (citations omitted).

22. Although withholding is very effective, it does not provide a 100% payment rate. Employee withholding can be evaded through submission of incorrect W-4 forms. Employers also sometimes fail to pay over employee withholding to the IRS. *See infra* text accompanying notes 170–171. Some employers set up systems to facilitate intentional evasion of employment tax responsibilities. *See* Christopher Bergen, *CID to Employment Tax Evaders: "We Will Catch You,"* (May 11, 2001), LEXIS, 2001 TNT 94-9.

return.[23] Information returning matching can be viewed as an invisible audit—but it is not counted in audit rate statistics.[24]

Information reporting also deters noncompliance,[25] as well as facilitating collection of delinquent taxes.[26] Thus, it may not be surprising that "voluntary" compliance[27] rates are much higher for the

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23. John Carroll describes a phenomenon in which taxpayers care primarily about whether they will get a refund with their return or owe more tax. John S. Carroll, *How Taxpayers Think about Their Taxes: Frames and Values*, *in* WHY PEOPLE PAY TAXES 49 (Joel Slemrod ed., 1992). In addition, individuals tend to be risk-averse with respect to choosing among gains (such as possible amounts of tax refunds) but risk-seeking with respect to choosing among losses (such as possible amounts of tax payments). *See* Michael W. Spicer, *Civilization at a Discount: The Problem of Tax Evasion*, 39 NAT'L TAX J. 13, 18 (1986) (citing Daniel Kahneman & Amos Tversky, *The Psychology of Preferences*, SCI. AM. 100 (Jan. 1982)). People will also accept more risk to avoid a loss than to obtain a gain. Jeff T. Casey & John T. Scholz, *Beyond Deterrence: Behavioral Decision Theory and Tax Compliance*, 25 LAW & SOC'Y REV. 821, 824 (1991). Both of these phenomena suggest that taxpayers in a refund position will take less risk (and therefore are less likely to cheat) than taxpayers in a balance due position.

Carroll raises the possibility of expanding the withholding system and paying interest on overwithholding to increase the sense of fairness and encourage people to err on the side that favors the government. Carroll, *supra*, at 49. However, this raises several concerns. First, the payment of interest might encourage taxpayers to use the federal government as a bank. That could be solved by paying a below-market rate of interest. However, that might even increase the sense of unfairness, by emphasizing the impression that withheld taxes properly belong to the taxpayer rather than to the government. That view might create upward pressure on the interest rate. Second, if interest were paid only on withholding and not on refundable credits such as the earned income credit, the refund would have to be allocated, which might increase the error rate in the interest calculation. Third, the payment of interest might encourage taxpayers to file late. This could be addressed by only paying interest to those who timely file or by cutting interest off at April 15 or a set date after April 15. Finally, at the margin, interest payments might encourage taxpayers to cheat by raising the amount at stake with respect to any taxes saved. However, that effect is not clear because of individual risk-aversion with respect to gains. *See* Spicer, *supra*, at 18.

24. *See* Guttman, *supra* note 16, at 593–94 ("A . . . taxpayer—we'll call him Z—has wage, interest, and dividend income, and a state tax refund from last year. Z also deducts mortgage interest, real property taxes, state income taxes, and some charitable contributions. Since most of those income and deduction items are reported to the IRS by third parties, IRS computers probably will compare the information reported by the third parties with that entered on Z's tax return. If there is no discernable discrepancy, which is usually the case, Z will not hear from the IRS. Although Z might be unaware of this computer-based review, he has essentially been audited.").

25. *See* AUDIT AND COLLECTION ACTIVITY STATISTICS FOR FISCAL 2000, *supra* note 16 ("we have an aggressive document-matching program in place to cross-check wages, interest and investment income to make sure people pay the right amount."); Plumley, *supra* note 5, at 28 (showing that an information return matching program is a strong deterrent of filing noncompliance).

An IRS study of voluntary compliance found that an increase in document matching did not increase reporting compliance. *Id.* at 36. However, as the study points out, compliance statistics suggest that taxpayers assumed that comprehensive document matching was in place before it actually was, so that an increase in actual matching would not influence reporting. *Id.*

26. *See* George Guttman, *The Interplay of Enforcement and Voluntary Compliance*, 83 TAX NOTES 1683, 1683–84 (1999) (explaining that, in 1998, "the IRS collected more than a billion dollars through letters sent as part of the information returns program.").

27. "Voluntary compliance" is an appealing phrase, because, like the term "customer," it suggests that paying taxes is a choice, though of course it is not. One of my students once said

types of income subject to information reporting (many of which also are subject to withholding) than for those that are not.[28] The overall voluntary compliance rate with respect to wage and salary income, for example, is generally estimated to be 95% or greater[29] and for dividends is approximately 94%.[30] By contrast, voluntary compliance with respect to income from self-employment income, which is not subject to information reporting,[31] is estimated at approximately 42% of taxes due.[32]

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something like, "voluntary compliance is 'voluntary' in the same way volunteer work is—it's not that you don't have to perform, you just don't get paid for it."

28. In 1994, approximately 70% of net personal income tax revenues was collected via withholding. JOEL SLEMROD & JON BAKIJA, TAXING OURSELVES: A CITIZEN'S GUIDE TO THE GREAT DEBATE OVER TAX REFORM 153 (1996).

29. *See* Phil Brand, *IRS's Worker Classification Program—An Inside Look at New Ways to Resolve the Problems*, 85 J. TAX'N 17, 19 (1996) (unpublished IRS data indicates that, for employees, the percentage of total taxes timely paid exceeds 98%, but for the self-employed, is approximately 78%); IRS RESEARCH DIV., COMPLIANCE ESTIMATES FOR SELECTED TYPES OF PERSONAL INCOME 1987 (1988), *reprinted in* SLEMROD & BAKIJA, *supra* note 28, at 150 [hereinafter 1987 COMPLIANCE ESTIMATES] (99.5% reporting rate for wages and salaries, 42.1% for partnerships and S corporations, and 41.4% for self-employment income).

30. Eric M. Zolt, *The Uneasy Case for Uniform Taxation*, 16 VA. TAX REV. 39, 71 n.130 (1996) (*citing* IRS, INCOME TAX COMPLIANCE RESEARCH, GROSS TAX GAP ESTIMATES AND PROJECTIONS FOR 1973–1992 (Publication 7285) Table I-2 (1988)). Wages, salaries, interest, dividends, and pensions are all subject to information reporting. SLEMROD & BAKIJA, *supra* note 28, at 153.

31. "Document matching is not useful for verifying business income, gain or loss on asset sales, or most itemized deductions. We estimate that the total personal income that cannot be verified by document matching was about $1.2 trillion in [fiscal year] 1998, or 19.7% of total reported personal income." *Statement of Charles O. Rossotti, Commissioner, Internal Revenue Service, Before the Annual RRA '98 Joint Hearing on IRS Progress Convened by the Joint Committee on Taxation* (May 14, 2002), LEXIS, 2002 TNT 94-19.

32. *See* 1987 COMPLIANCE ESTIMATES, *supra* note 29. The level of tax compliance with respect to illegal income is estimated to be only 5 or 10%. *See, e.g.*, Leo P. Martinez, *Federal Tax Amnesty: Crime and Punishment Revisited*, 10 VA. TAX REV. 535, 555 n.76 (1991) (compliance rate of heroin sellers estimated to be 9%) (citations omitted); S. Rep. No. 97-494, at 251 (1982) (estimating 5% reporting rate for illegal income).

Tax on income from illegal business may be hardest to collect because of the secretive nature of the activity. The magnitude of this problem is unclear because "tax gap" figures, extrapolated from TCMP audit results, do not include most illegal-source income. *See* George Guttman, *Measuring the Effectiveness of the Internal Revenue Service*, 89 TAX NOTES 1102, 1104 (2000). However, it appears to be substantial. *See* Martinez, *supra*, at 555 n.76 (citing ABT ASSOCIATES, UNREPORTED TAXABLE INCOME FROM SELECTED ILLEGAL ACTIVITIES, 61, 108, 147 (1984) (estimating unreported taxable income in 1982 was $22.15 billion for drugs, $2.39 billion for gambling, and $1.58 billion for prostitution)). Taxpayers engaged in illegal activity have a strong incentive not to report the income from that activity because reporting it may reveal the underlying crime. *See id.* at 580 ("For some, evasion is a conscious act to avoid detection of illegal activities such as drug sales or money laundering . . . .").

Tax underpayments involving illegal income may be more susceptible to criminal prosecution than other cases because they involve activity that is itself illegal. That is, it may be easier to prove that underreporting was intentional rather than accidental with respect to illegal-source income. However, prosecution for tax evasion may be pointless in most cases in which there is underlying criminal activity for which the taxpayer can be prosecuted. That is, absent an

Nonetheless, the constraining techniques of information reporting and withholding and adversarial techniques focused on enforcement probably do not explain all tax compliance. That is, there may be a role for softer, more "cooperative" strategies.[33] There are a variety of possible cooperative strategies but, given the focus of IRS reform, a particularly important question is whether IRS "friendliness"—in the form of increased service, an emphasis on procedural fairness, or a softer tone in communications with taxpayers—can increase voluntary compliance. This is an important question because the revenue from voluntary compliance constitutes approximately 98% of total revenue.[34]

Following this Introduction, the article contains two principal parts. First, Part II focuses on IRS reform. Section A of that part briefly discusses the events that led to IRS reform. Section B considers the effect that IRS reform has had on enforcement to date.

Part III of the article examines the critical question of the effect of a kinder, gentler IRS on voluntary compliance. Section A of that Part considers the available evidence of the impact of taxpayer service on tax collection. Section B discusses the relevance of perceptions of procedural fairness. Section C analyzes the role of the tone of communications from a tax collection agency. The article concludes that there is little evidence that greater "customer service" by the IRS or a softer tone that is not sensitive to context will increase compliance, but that it is possible that increased perceived procedural fairness may have a positive effect on compliance.

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extraordinary situation in which the underlying criminal activity cannot be proven, but tax evasion can, adding a charge of tax evasion would have little marginal deterrent effect. Moreover, it would have little deterrent effect on other criminals. It would also probably have much less deterrent effect on taxpayers with legal-source income than would criminal prosecution of other taxpayers with legal-source income. *See* Stefan F. Tucker, *ABA Tax Section Suggests Changes to Criminal Investigation Division* (Dec. 23, 1998), LEXIS, 1999 TNT 10-32. The IRS study of voluntary compliance found that criminal tax convictions has a significant and positive effect on reporting compliance. *See* Plumley, *supra* note 5, at 36. However, that study did not distinguish between criminal tax prosecutions of those with legal-source and those with illegal-source income.

Given the likely lack of deterrent effect of enforcement directed at illegal-source income, it is likely very inefficient for the IRS to pursue the taxes on criminal-source income, except perhaps in isolated cases where the taxpayer has substantial assets. The IRS will get more value from its limited enforcement resources by pursuing other tax evaders.

33. *See generally* Lederman, *supra* note 14 (arguing that fostering compliance norms can increase compliance and that enforcement can help sustain those norms).

34. *See infra* text accompanying note 76 (enforcement revenue constitutes approximately 2% of total revenue collected after refunds).

II. The Connection Between IRS Reform and Tax Compliance

A. Why Reform the IRS?

There are a number of possible (and overlapping) concerns about any tax collection agency: (1) its efficiency, which may implicate things such as its use of technology; (2) the skills of its workforce, which may reflect issues such as the adequacy of training; (3) possible abuses of power by employees; and (4) the image of the agency, which is sometimes said to affect voluntary compliance. The federal government, including Charles Rossotti, who was Commissioner of the IRS from November 1997 to November 2002,[35] has focused on all of these issues.[36] However, IRS reform specifically stems from a variety of problems that Congress and taxpayers experienced beginning in the early 1990s.

First, the IRS poorly implemented a computer upgrading project at a cost of $4 billion dollars, after Congress appropriated funds for that purpose.[37] Second, the General Accounting Office issued numerous reports criticizing a variety of aspects of IRS performance.[38] Third, taxpayers complained about difficulties in reaching the IRS by telephone, rude treatment by IRS personnel, and the intrusiveness of the Taxpayer Compliance Measurement Program (TCMP), the in-depth audit the IRS used as a compliance tool.[39] In 1995, Congress established a commission to consider restructuring the IRS.[40] In 1997, the commission made several recommendations, including restructuring Congressional oversight of the IRS, providing the IRS with a Board of Directors, updating the IRS's technology, requiring the IRS to develop a strategic plan for increasing electronic filing of tax returns, increasing taxpayers' ability to recover damages in appropriate cases, and simplification of the tax law.[41]

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35. The current Commissioner is Mark W. Everson. *See* http://www.irs.gov/irs/article/0,,id=98192,00.html (last visited May 3, 2003).

36. *See, e.g.*, JOINT COMMITTEE REPORT, *supra* note 1 ("Goals of the IRS Reform Act included increasing public confidence in the IRS and making the IRS an efficient, responsive, and respected agency that acts appropriately in carrying out its functions."); Patti Mohr, *Compliance Problems Top Priority, Rossotti Says*, 91 TAX NOTES 206, 206 (2001) ("Rossotti named customer service, fairness, and compliance as the top priorities of IRS restructuring at the most basic level.").

37. CONGRESSIONAL RESEARCH SERVICE, CRS REPORTS ON STATUS OF IRS RESTRUCTURING AND REFORM (Mar. 22, 2001), LEXIS, 2001 TNT 60-42 [hereinafter CRS REPORT].

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

As a result of the commission's report, in 1997, Representative Rob Portman and Senator Bob Kerrey introduced bills that reflected the commission's recommendations.[42] However, before work on the Senate bill was completed,[43] the Senate Finance Committee collected "horror stories"[44] and conducted hearings that were broadcast on television[45]—which "effectively altered the tenor of the legislation."[46] The government subsequently investigated many of the horror stories and found them to be unfounded or exaggerated[47]—a standard risk in relying on anecdotes as the basis for legislation[48]—but the investigation was not completed until after Congress had reacted to the show.[49]

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42. *Id.*

43. *Id.*

44. Ryan J. Donmoyer, *GOP Opens IRS Horror Story Web Site*, 77 TAX NOTES 667, 667 (1997). Halloween was chosen as the date to unveil the website, apparently because of its symbolic value. *See id.* ("'This Halloween, the Republican Congress is unmasking the IRS for what it really is:.a bureaucratic monster stalking the American taxpayer,' [Rep. John A.] Boehner said.").

45. *See* Ryan J. Donmoyer, *Three Days of Hearings Paint Picture of Troubled IRS*, 76 TAX NOTES 1655, 1655 (1997) (discussing broadcasts of taxpayers telling their horror stories on live television). Senator William Roth, who chaired the hearings, also co-authored a book that "vividly recreate[s] the stories of the victims of the Internal Revenue Service using exclusive interviews with those who have been unjustly audited, foreclosed, prosecuted, and worse." Dust jacket of WILLIAM V. ROTH, JR. & WILLIAM H. NIXON, THE POWER TO DESTROY (1999).

46. CRS REPORT, *supra* note 37. This was not the first set of IRS hearings that led to more taxpayer "rights":

> In 1987 and 1988, then-Senator David Pryor, who was head of the Finance Committee's Oversight subcommittee, held hearings on taxpayer problems in dealing with the IRS. (Those hearings were unusual because Finance subcommittees do not have the staff or budget to do investigations.) The hearings led to the adoption of the first Taxpayer Bill of Rights.

George Guttman, *Evaluating the IRS: The Senate Finance Hearings in Retrospect*, 77 TAX NOTES 13, 13 (1997). Those hearings focused on taxpayer horror stories, as well. *See* MaryGael Timberlake, *Bentsen Voices Opposition to Gas Tax Increase; Taxpayers Kiss Old Law Goodbye on April 15*, 35 TAX NOTES 213, 214 (1987) ("[S]hortly before recessing, the Finance Subcommittee on IRS Oversight held the first of two hearings on a bill by Subcommittee Chairman David Pryor, D-Ark., to establish a taxpayers' bill of rights. The hearing largely focused on taxpayers' horror stories at the hands of the IRS.").

47. GENERAL ACCOUNTING OFFICE, GAO REPORT ON ALLEGATIONS OF IRS TAXPAYER ABUSE (May 24, 1999), LEXIS, 2000 TNT 80-13; *see also* Joe Spellman, *Conference Panel Ponders Finance Hearing Horror Stories*, 83 TAX NOTES 1854, 1854–55 (1999) (discussing the hearings generally and mentioning the situation of John Colaprete in particular).

48. *See* David A. Hyman, *Lies, Damned Lies, and Narrative*, 73 IND. L.J. 797 (1998) (describing the perils of relying on anecdotes instead of data).

49. In 1997, Congress held a series of hearings where the American people saw the

> Internal Revenue Service almost literally on trial. They saw a parade of witness [sic] come before Congress to testify about the naked abuse of power over at the Internal Revenue Service.

The principal charge that Congress gave the IRS was to reorganize and become more "customer"-friendly.[50] The restructuring ranged from the symbolic, such as a changed mission statement[51] that does not mention the collection of taxes,[52] to an expensive overhaul of the entire organizational structure. The overhaul involved a change from a geography-focused organization to one based on taxpayer segments.[53]

> We saw current and former IRS agents who had to testify in secret because they feared for their lives. We saw ordinary citizens, taxpayers, who talked about how an audit turned their entire lives upside down, with some of them suffering great financial loss that will never be recovered. We saw a government agency totally out of control, lacking accountability, an agency where one is guilty until proven innocent.
>
> We saw and heard all this and we acted to put a stop to it. We enacted sweeping reforms of the IRS to make it more efficient and taxpayer friendly, and we provided critical new protections for the American taxpayer to make the IRS more accountable. In a sense, the Internal Revenue Service Restructuring and Reform Act put the IRS on probation.

JOINT REVIEW OF THE STRATEGIC PLANS AND BUDGET OF THE INTERNAL REVENUE SERVICE, AS REQUIRED BY THE INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998, JCS-4-99, at 77 (May 25, 1999) [hereinafter STRATEGIC PLANS AND BUDGET] (opening statement of Rep. Forbes), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_joint_committee_on_taxation&docid=f:57610.wais (last visited August 17, 2003).

50. *See infra* text accompanying notes 99–102.

51. The new mission statement is: "Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities by applying the tax law with integrity and fairness to all." I.R.M. § 1.1.1.1(1). The old one read: "The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity and fairness." Policy Statement P-1-1, Status (approved Dec. 18, 1993) (from 1998 Internal Revenue Manual). That mission statement dated from the 1960s. Rossotti, *supra* note 8, at 1192.

52. "What's missing [from the new IRS mission statement]? In the new mission statement the words 'collect taxes' do not appear." *Tax Analysts' Executive Director Addresses IRS's Split Personality*, 95 TAX NOTES 1266, 1267 (2002). Even the goals of the restructuring do not explicitly focus on the collection of taxes:

> To assist in achieving its new mission, the IRS has developed three strategic goals. The first goal is to provide top quality service to *each* taxpayer. The second goal is to provide top quality service to *all* taxpayers. The third goal is to increase productivity within the IRS by providing IRS employees with a quality work environment. The IRS describes the process of change necessary to meet its strategic goals and fulfill its mission statement as "modernization."

JOINT COMMITTEE REPORT, *supra* note 1, at 1 (footnote omitted) (emphasis in original).

53. RRA '98, *supra* note 9, § 1001(a). The four principal divisions of the new structure are Wage and Investment Income (W&I), Small Business and Self-Employed (SB/SE), Large and Mid-Sized Businesses (LMSB), and Tax-Exempt and Government Entities (TE/GE). *See* LEANDRA LEDERMAN & STEPHEN W. MAZZA, TAX CONTROVERSIES: PRACTICE AND PROCEDURE 6 (2d ed. 2002) (noting the four operating divisions); *cf.* I.R.M. § 5.17.1.4.1(2). There are other divisions, as well, such as the Appeals Division and the Criminal Investigation Division. *See* LEDERMAN & MAZZA, *supra*, at 6 (noting the functional units of the IRS).

RRA '98 also contained an array of pro-taxpayer procedural provisions, most of which were collected under the label "Taxpayer Bill of Rights 3," the name for Title III of the Act, which contained over 70 provisions.[54] Some provisions restrict the IRS's approaches to collection, such as the one requiring that all liens, levies, and seizures have supervisor approval;[55] the section prohibiting IRS seizure of a taxpayer's home without judicial approval;[56] and the "collection due process" procedures.[57] A provision widely linked[58] to a decline in enforcement activity,[59] referred to as the "ten deadly sins," calls for sanctioning with termination of employment a wide variety of IRS employee behavior.[60]

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54. *See* RRA '98, *supra* note 9, §§ 3000 et seq. (Taxpayer Protection and Rights).

55. *See id.* § 3421 (effective on July 28, 1998, except that, for collection actions under the automated collection system, effective for collection actions initiated after December 31, 2000).

56. I.R.C. § 6334(e)(1); RRA '98, *supra* note 9, § 3445(a), (b).

57. I.R.C. §§ 6320, 6330; RRA '98 *supra* note 9, § 3401; *see also* Leslie Book, *The New Collection Due Process Taxpayer Rights*, 86 TAX NOTES 1127, 1127 (2000) (providing context for the collection due process changes).

58. *See* Ann Murphy & David Higer, *The 10 Deadly Sins: A Law With Unintended Consequences*, 96 TAX NOTES 871, 873 (2002) (arguing that a fear of prosecution among IRS employees hampers enforcement); Amy Hamilton, *Newspapers Link "10 Deadly Sins" to IRS Enforcement Figures Drop*, 83 TAX NOTES 1119, 1119 (1999) ("the key issue appears to be fear among the IRS employees that they will break a law intended to protect taxpayers from overzealous collectors").

59. *See infra* text accompanying notes 69–73.

60. RRA '98, *supra* note 9 § 1203(b). The ten deadly sins are:

> (1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets; (2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative; (3) with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of—(A) any right under the Constitution of the United States; or (B) any civil right established under—(i) title VI or VII of the Civil Rights Act of 1964; (ii) title IX of the Education Amendments of 1972; (iii) the Age Discrimination in Employment Act of 1967; (iv) the Age Discrimination Act of 1975; (v) section 501 or 504 of the Rehabilitation Act of 1973; or (vi) title I of the Americans with Disabilities Act of 1990; (4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative; (5) assault or battery on a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery; (6) violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service; (7) willful misuse of the provisions of section 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry; (8) willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefore (including

Other provisions assist taxpayers in contesting asserted liabilities. These include a section providing for the possibility of a shift of the burden of proof to the IRS in litigated tax cases,[61] a more widely applicable set of rules for "innocent spouse" relief from joint and several liability,[62] an authorization of $6 million in matching funds for low-income taxpayer clinics (since increased to $7 million),[63] and cessation of both interest and certain time-sensitive penalties in cases in which the IRS does not send notice of the proposed liability within 12 or 18 months,[64] despite the periods of three years and longer contained in the statute of limitations on assessment.[65]

Following RRA '98, the IRS shifted substantial resources from enforcement to taxpayer service, partly by not rehiring in enforcement for attrition, and partly by detailing enforcement personnel to taxpayer service.[66] In fiscal year 2000, the detailing of personnel to customer service reduced examination programs by 605 staff years.[67] In fiscal

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> any extensions), unless such failure is due to reasonable cause and not to willful neglect; (9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect; and (10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

Id. The IRS has "requested that the unauthorized inspection of returns or return information be added to the list of violations." JOINT COMMITTEE REPORT, *supra* note 1, at 9.

61. I.R.C. § 7491; RRA '98, *supra* note 9, at § 3001(a).

62. I.R.C. § 6015; RRA '98, *supra* note 9, § 3201.

63. I.R.C. § 7526; RRA '98, *supra* note 9, § 3103.

64. I.R.C. § 6404(g).

65. *Id.*. § 6501.

66. "In response to the-[] demands [of RRA '98], and with a declining pool of staff resources, IRS reallocated staff from compliance (other than returns processing) and collection programs to provide additional support to taxpayer assistance services." JAMES R. WHITE, GENERAL ACCOUNTING OFFICE, REPORT TO THE CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT, COMMITTEE ON WAYS AND MEANS, HOUSE OF REPRESENTATIVES, TAX ADMINISTRATION: IMPACT OF COMPLIANCE AND COLLECTION PROGRAM DECLINES ON TAXPAYERS, GAO-02-674 (May 22, 2002), LEXIS, 2002 TNT 126–60 [hereinafter TAX ADMINISTRATION REPORT]; *see also* Patti Mohr, *"Compliance Problems Top Priority," Rossotti Says*, 91 TAX NOTES 206, 206 (2001) ("The agency's ability to enforce compliance fell this past year [2000] because of a long-term decline in staffing and a shift toward staffing customer service positions."). The detailing generally occurred during tax filing season (January through mid-April). DEPARTMENT OF THE TREASURY, MANAGEMENT ADVISORY REPORT: THE INTERNAL REVENUE SERVICE'S RESPONSE TO THE FALLING LEVEL OF INCOME TAX EXAMINATIONS AND ITS POTENTIAL IMPACT ON VOLUNTARY COMPLIANCE, Ref. No. 2002-30-092, at 4 (June 2002) *available at* http://www.ustreas.gov/tigta/2002reports/200230092fr.pdf (last visited August 21, 2003) [hereinafter 2002 MANAGEMENT ADVISORY REPORT].

67. 2002 MANAGEMENT ADVISORY REPORT, *supra* note 66, at 4. A staff year consists of 2000 hours. *Id.* at 9 n.9.

In 2000, the time detailed to taxpayer service amounted to approximately 14% of collection time. TAX ADMINISTRATION REPORT, *supra* note 66. That figure dropped to 5% in 2001. *Id.* The total number of staff years detailed from collection and examination to customer service is reflected in the following table:

year 2001, the number of professional staff in audit and field collection was about 21% lower than a pre-1987 buildup in that staff.[68]

B. The Impact of IRS Reform on Enforced Compliance

Not surprisingly, the post-RRA '98 reallocation of resources resulted in (or at least coincided with) a significant decline in enforcement activity.[69] It has been well publicized that the most aggressive tax collection tools, levies and seizures (along with notices of federal tax lien[70]), dropped substantially following the mid-1998 enactment of RRA '98, and only began to increase slightly in 2001. The following table provides those numbers:[71]

Fiscal Year	Aggregate Staff Years Detailed to Customer Service from Collection and Examination
1996	165
1997	265
1998	491
1999	755
2000	974
2001	271

DEPARTMENT OF THE TREASURY, MANAGEMENT ADVISORY REPORT: ANALYSIS OF TRENDS IN COMPLIANCE ACTIVITIES THROUGH FISCAL YEAR 2001, Ref. No. 2002-30-184, at 14 (Sept. 2002) *available at* http://www.treas.gov/tigta/2002reports/200230184fr.pdf (last visited August 21, 2003) [hereinafter MANAGEMENT ADVISORY REPORT: COMPLIANCE].

68. TAX ADMINISTRATION REPORT, *supra* note 66. The IRS reversed the downward trend, hiring 646 new Revenue Agents and 126 new Tax Compliance Officers in June and July of 2001. 2002 MANAGEMENT ADVISORY REPORT, *supra* note 66, at 4. They will require several years of training and experience to be fully productive. *Id.*

69. The average time spent per tax return examined dramatically increased from 30 to 44 hours. *Id.* at 9. That may be due to the restructuring or lower morale, among other factors. *Id.*

70. Notices of Federal Tax Lien do not directly produce revenue but, because they protect the IRS's interest with respect to other creditors of the taxpayer, they may have a delayed effect on enforcement revenue.

71. The chart is IRS data drawn from the following reports: INTERNAL REVENUE SERVICE: DELINQUENT COLLECTION ACTIVITIES, FISCAL YEARS 2000 AND 2001; DELINQUENT COLLECTION ACTIVITIES, FISCAL YEARS 1999 AND 2000; DELINQUENT COLLECTION ACTIVITIES, FISCAL YEARS 1998 AND 1999; AND DELINQUENT COLLECTION ACTIVITIES, FISCAL YEARS 1997 AND 1998, *available at* http://www.irs.gov/taxstats/article/0,,id=97168,00.html (last visited Apr. 3, 2003).

Table 1
Notices of Federal Tax Lien, Levies, and Seizures, 1997-2001

Fiscal Year[72]	Notice of Federal Tax Lien (Rounded)	Levies (Rounded)	Seizures
1997	544,000	3,659,000	10,090
1998	383,000	2,503,000	2,259
1999	168,000	504,000	161
2000	288,000	220,000	174
2001	428,000	447,000	255

Audit rates continued a decline that had begun before RRA '98 became law.[73]

These figures are dramatic but not surprising in light of the complex reorganization and substantial retraining of personnel required by RRA

72. The government's fiscal year runs from October 1 to September 30. *See* Martin A. Sullivan, *Economic Analysis—Corporate Tax Revenues: Up, Down, and All Around*, 95 TAX NOTES 25, 25 (2002) (giving October 1 as the starting date for the government's fiscal year).

73. "The IRS continues to audit the 1,100 largest corporations every year but the audit rate for all other corporations declined from 3 percent in 1992 to 1.1 percent in fiscal year 2001." JOINT COMMITTEE REPORT, *supra* note 1, at ¶ 120. The table below shows the audit rates for individuals from 1995 through 2001.

Year	Audit Rate
1995	1.67%
1996	1.67%
1997	1.28%
1998	.99%
1999	.90%
2000	.49%
2001	.58%

INTERNAL REVENUE SERVICE, PROGRESS REPORT FROM THE COMMISSIONER OF INTERNAL REVENUE, *available at* http://www.irs.gov/pub/irs-utl/pub3970_2-2002.pdf at 43 (Dec. 2001) (last visited August 21, 2003) [hereinafter INTERNAL REVENUE SERVICE PROGRESS REPORT].

'98. They are also not particularly informative.[74] More informative than a short-term decline in enforcement activity is its effect on revenue collected; liens, levies, and seizures are only the tools, not the results. After RRA '98 was enacted, enforcement revenue declined somewhat, as the chart below illustrates.[75] Yet total revenue increased (in absolute terms).[76] Thus, enforcement revenue steadily declined as a percentage of total revenue until 2001.

Table 2
Enforcement Revenue Compared to Total Revenue, 1997-2001

Fiscal Year	Total Federal Tax Revenue Collected Before Refunds (Billions)	Total Revenue Collected After Refunds (Billions)	Enforcement Revenue (Billions)	Enforcement Revenue as Percent of Total Revenue After Refunds
1997	1,623.27	1,505.0	37.2	2.47%
1998	1,769.41	1,641.3	35.2	2.14%
1999	1,904.15	1,746.1	32.9	1.88%
2000	2,096.92	1,900.3	33.8	1.78%
2001	2,128.83	1,902.1	33.8	1.78%

Why did enforcement revenue not decline as much as the decline in enforcement activity might suggest? Enforcement revenue comes from a

74. The Taxpayer Protection and IRS Accountability Act of 2003, H.R. 1528, which passed the House in June of 2003, includes a provision to do a study of "of the practices of the Internal Revenue Service concerning liens and levies," including "the declining use of liens and levies by the Internal Revenue Service." *Id.* § 205.

75. Most of the data in this table appears in the Appendix to the JOINT COMMITTEE REPORT, *supra* note 1. Total Federal Tax Revenue collected is rounded to one decimal point in the Appendix to the JOINT COMMITTEE REPORT. Those figures appear in more detail at INTERNAL REVENUE SERVICE, INTERNAL REVENUE GROSS COLLECTIONS BY TYPE OF TAX, FISCAL YEARS 1973-2002, *at* http://www.irs.gov/pub/irs-soi/02db07c0.xls (last visited May 4, 2003) [hereinafter IRS STATISTICS OF INCOME]. Percentages are calculated by the author.

76. The absolute amount of gross tax collections of individual income taxes also increased over that period. The figures are as follows: for 1997, $825.02 billion; for 1998, $928.07 billion; for 1999, $1002.19 billion; for 2000, $1137.08 billion, and for 2001, $1178.21 billion. *See* IRS STATISTICS OF INCOME, *supra* note 75.

multitude of sources, but the bulk of enforcement revenue comes from "delinquent accounts."[77] These are taxpayer accounts with the IRS in cases in which the IRS has assessed the tax—so that, in most cases, liability is not in dispute—but has not collected it. Levy and seizure revenue constitute a relatively small portion of delinquent account revenue.[78] Much delinquent account revenue is collected following IRS telephone calls or letters and through installment agreements.[79] As a

77. The following chart shows the portion of enforcement revenue from delinquent accounts for the five-year period between 1997 and 2001:

Fiscal Year	Delinquent Account Revenue as Percent of Enforcement Revenue
1997	80.40%
1998	84.97%
1999	88.66%
2000	88.58%
2001	95.24%

For sources of data in this chart, *see* IRS STATISTICS OF INCOME, *supra* note 75, and JOINT COMMITTEE REPORT, *supra* note 1 (percentages calculated by the author).

78. Guttman, *supra* note 26, at 1683–84.

79.George Guttman states that about 20% of enforcement revenue is collected under installment agreements, *see id.* at 1683, but the chart below suggests that it is closer to 25%. In contrast, Offers in Compromise provide a tiny fraction of the revenue.

Fiscal Year	Number of Installment Agreements Entered (Rounded)	Aggregate Dollars Received from Installment Agreements	Aggregate Dollars Received from Offers in Compromise
1997	2,816,000	10.84 billion	295.0 million
1998	2,828,000	10.752 billion	290.1 million
1999	2,431,000	8.415 billion	311.6 million
2000	2,243,000	8.321 billion	316.2 million
2001	2,147,000	8.638 billion	340.8 million

See INTERNAL REVENUE SERVICE PROGRESS REPORT, *supra* note 73, at 44; JAMES R. WHITE, GENERAL ACCOUNTING OFFICE, IRS SHOULD EVALUATE THE CHANGES TO ITS OFFER IN COMPROMISE PROGRAM (Mar. 2002), Appendix I tbl. 5, LEXIS, 2002 TNT 60-22.

result, absolute revenue from delinquent accounts did not really decline,[80] as Table 3 shows.[81]

Table 3
Delinquent Account Revenue, 1997–2001

Fiscal Year	Revenue from Delinquent Accounts (Billions of Dollars)
1997	29.91
1998	29.91
1999	29.17
2000	29.94
2001	32.19

Overall, the data indicates that RRA '98 decreased enforcement, at least temporarily, which is not surprising. Congress did not manifest particular concern with compliance when it focused on reforming the IRS to be more service-oriented and respectful of taxpayer rights, and, given limited resources, an increase in service is likely to result in a decrease in enforcement. Yet, despite the press reports about the dramatic drop in liens, levies, and seizures, RRA '98 has not been a disaster for absolute enforcement revenue.

Of course, the revenue figures above do not reveal what percent of *available* revenue the IRS actually is collecting and whether that percent

80. *See* TAX ADMINISTRATION REPORT, *supra* note 66 ("In general, the amount of unpaid taxes identified by these compliance programs did not decline as much as the number of cases closed. In two of the six compliance programs, the amount of unpaid taxes identified increased. The data available to us do not make clear the extent to which this increase may represent a change in the type of cases worked, increased levels of noncompliance by taxpayers, or other factors, including inflation.").

81. The data in this chart are taken from INTERNAL REVENUE SERVICE, DELINQUENT COLLECTION ACTIVITIES, FISCAL YEARS 2000 AND 2001 (MAR. 2002); DELINQUENT COLLECTION ACTIVITIES, FISCAL YEAR 1998 AND 1999 (May 2001); INTERNAL REVENUE SERVICE, DELINQUENT COLLECTION ACTIVITIES, FISCAL YEARS 1997 AND 1998 (Sept. 2000); all *available at* http://www.irs.gov/taxstats/article/0,,id=97168,00.html (last visited August 17, 2003).

has declined.[82] Immediately following RRA '98, there was a dramatic increase in the number of delinquent accounts that the IRS did not pursue:

> The IRS has . . . sent cases of delinquent taxpayers to an inactive file with increasing regularity. In 1999, the IRS sent 668,018 cases to the inactive file as compared to just 98 in 1998. Sending these cases (a sizeable percentage of the three million cases from 1999) to the inactive file had the practical effect of writing off $2.5 billion in taxes owed to Treasury.[83]

More specifically, the data for 1998 through 2001 are as follows:

Table 4
Action on Delinquent Accounts, 1998-2001[84]

Fiscal Year	Portion of Delinquent Accounts Moved to Inactive File	Aggregate Dollar Amount of Delinquent Accounts Moved to Inactive File
1998	Nearly zero	Nearly zero
1999	26.7%	$.71 billion
2000	46.6%	$2.5 billion
2001	N/A	$1.78 billion (projected based on portion through March 31)

In 1999, the IRS instituted a new priority system that generally assigned priorities to more recent cases, those with higher delinquent

82. *Cf.* Alan H. Plumley, *The Impact of the IRS on Voluntary Tax Compliance: Preliminary Empirical Results* (Nov. 14, 2002), LEXIS, 2002 TNT 224-22 ("Our latest projection of the gross tax gap (the amount of tax imposed by law that is not paid voluntarily and timely) was on the order of $275 billion for all income and employment taxes in 1998. This was over 15% of the tax due. Of that amount, we estimate that only $50 billion will eventually be collected through enforcement and other late payments.").

83. Murphy & Higer, *supra* note 58, at 872 (footnotes omitted). The number of taxpayers with unpaid tax liabilities in the "queue," an automated file holding cases that the IRS does not have the resources to work, see MANAGEMENT ADVISORY REPORT: COMPLIANCE, *supra* note 67, at 10, was 317,865 in fiscal year 1996; 425,780 in fiscal year 1997; 407,210 in fiscal year 1998; 445,877 in fiscal year 1999; 537,781 in fiscal year 2000; and 542,406 in fiscal year 2001. *Id.* at 16, Figure 9. The value of unpaid accounts in the queue increased from $2.96 billion in September 1996 to $7.85 billion in September 1999. Memorandum from Pamela J. Gardiner, Deputy Inspector General for Audit to Commissioner Rossotti (May 12, 2000), at 10. In 2001, the IRS used a special closing code to remove 1,720,683 unpaid accounts from the queue. MANAGEMENT ADVISORY REPORT: COMPLIANCE, *supra* note 67, at 16, fig. 10.

84. The source of this data is David Cay Johnston, *A Smaller I.R.S. Gives Up on Billions in Back Taxes*, The N. Y. TIMES, Apr. 13, 2001, at A1, who drew them from IRS documents he received from an IRS employee.

amounts, to taxpayers who contacted the IRS about their delinquencies, and to employment tax over income tax.[85] In addition, the new system provides for periodic review of the cases and setting aside of those of a certain age that have been passed over for more recent cases.[86] Thus, former Commissioner Rossotti stated that the IRS has shifted its focus to the "most productive cases."[87]

The new system achieved its goals in that

> the median amount owed by the taxpayers for whom collection action was deferred was about $4,500, compared with $5,500 for other delinquent taxpayers in the collection population. Also, the taxpayers for whom collection action was deferred tended to have been delinquent for a longer period of time—about an estimated 5.6 years versus an estimated 3.9 years.[88]

While positive, this achievement should be considered in the larger context of the possible revenue the IRS did not have the resources to pursue:

> [B]y the end of fiscal year 2001, after the deferral policy had been in place for about two and one-half years, IRS had deferred collection action on the tax debts of an estimated 1.3 million taxpayers. We also estimate that these 1.3 million taxpayers owed about $16.1 billion in unpaid taxes, interest, and penalties that originated from assessments by all six compliance programs. By fiscal year 2001, IRS was deferring collection action on tax debts at a rate equal to one of three new delinquencies assigned to the collection programs.[89]

Thus, although enforcement revenue did not decrease dramatically between 1998 and 2001, it appears that the portion of identified

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85. TAX ADMINISTRATION REPORT, *supra* note 66, at ¶ 35.

86. *Id.* Those cases are labeled "not collectible" but the taxpayers involved continue to get notices and to have any refunds seized to offset their balances due. *Id.* The IRS is entitled to reopen those cases, so long as the statute of limitations on collections has not expired, but in practice will not do so unless "(1) . . . the taxpayer becomes delinquent again or if IRS receives information indicating that the taxpayer had additional assets that could help pay off the delinquency and (2) . . . IRS finds the resources to work" those cases. *Id.*

87. Letter from Charles O. Rossotti to James R. White, included as Appendix II of TAX ADMINISTRATION REPORT, *supra* note 66, at ¶ 91 ("Your report indicates that although there has been a 28% decline in direct staff time there was only a 7% drop in dollars collected. This is a result of our continuing efforts to provide focus to the most productive cases in our inventory. We are hopeful that this focus as well as our reengineering efforts will help improve productivity and reverse some of the declines.").

88. *Id.* at ¶ 38 (footnotes omitted).

89. *Id.* at ¶ 37 (footnotes omitted).

delinquencies that the IRS pursued and collected decreased and the magnitude of uncollected delinquencies grew substantially. This paints a bleaker picture of the short-term effect of RRA '98 on enforcement than does collections alone.[90] Of course, the key question for the federal fisc is the likely effect of a change in enforcement activity or results on voluntary compliance. The next Part considers the possible impact on voluntary compliance of the IRS's shift in focus to a more "customer"-oriented organization following RRA '98.

III. THE ROLE OF A KINDER, GENTLER IRS

What role does a reformed, "friendlier" IRS play in a tax compliance strategy? Do taxpayers respond differently to a service-oriented IRS or to a softer tone in IRS enforcement?

Some IRS officials[91] and others[92] apparently hold the view that a friendlier IRS is better for compliance. Theoretically, greater responsiveness to taxpayers may support greater tax collection, just not through enforcement.[93] Kent Smith has argued that:

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90. "The IRS attributes its inability fully to pursue enforcement cases to the modernization effort, a decrease in staff, reassignment of collection employees to support customer service activities, and additional staff time needed to implement certain taxpayer protections that were included in the IRS Reform Act." JOINT COMMITTEE REPORT, *supra* note 1, at 5–6.

91. *See, e.g.*, Guttman, *supra* note 4, at 36–37 ("[T]here is disagreement within the IRS on how to ensure voluntary compliance. Should the IRS threaten taxpayers with enforcement action, or provide better customer service? The pendulum swings back and forth every few years between compliance and customer service, but there is no consensus on how best to proceed."); Lee A. Sheppard, *ABA Ponders Where We Go from Here* (May 20, 1987), LEXIS, 87 TNT 98-4 ("We're asking ourselves what our role is, and trying to treat taxpayers and practitioners as customers,' said [then-Commissioner Lawrence] Gibbs, recognizing the need for enhanced taxpayer assistance. Public relations and soul searching aside, enforcement of the laws is what keeps people honest. "People are, in the final analysis, going to pay their taxes because they think they'll get caught, and have to pay a penalty," Gibbs observed. So much newly budgeted money and effort will go into enhanced enforcement and examination.").

92. *See* Jack Teuber, *IRS Horror Stories Prompt Hearing on Proposed Taxpayers "Bill of Rights*," 35 TAX NOTES 219, 220 (1987) (*quoting* Senator David Pryor) ("Like a bully, the IRS relies on intimidation and arm twisting to strike fear into the hearts of those it bullies . . . . And they do this in the name of compliance. It is my guess that compliance could be improved not by continuing to browbeat taxpayers, but by reestablishing respect for the IRS in the manner in which it performs a difficult and unpopular task.").

93. Professor Joshua Rosenberg has made this argument, comparing a service-oriented IRS focus to a customer-focused retail store:

> I began to consider what the IRS might learn from other customer-friendly and successful enterprises. I noted that when I go to Nordstrom's Department stores, an enterprise nationally known for being customer-friendly, an associate is always available and attentive, guiding me, helping me figure out what to select, and ringing up the sale. The customer is encouraged, in a very helpful and friendly way, to buy what the store has to sell . . . .

> [r]esponsive service and procedural fairness as positive treatments by tax authorities can have both direct and indirect effects on taxpayers' compliance behavior. Positive actions by authorities toward taxpayers may be reciprocated by compliant actions on a simple tit-for-tat basis, a direct effect on taxpayers' actions that is not mediated by normative or legitimating processes. However, reciprocity also appears to be a basic, normative obligation in many social situations, and positive treatments by authorities may also engender in taxpayers a more general normative commitment to compliance, particularly if the taxpayers believe that the authorities normally and routinely act positively toward taxpayers.[94]

As this excerpt suggests, IRS service to taxpayers and procedural fairness are two different but connected concepts.[95] The IRS's "service" role is in helping taxpayers comply with the tax laws.[96] Procedural fairness refers to issues such as due process and equality of treatment.[97] Each may impact compliance by affecting the taxpayer's image of the

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> On the other hand, at some less well-run stores, the customer may be left alone to wait endlessly for assistance. . . .
>
> In many ways, our tax collection system *has* resembled a poorly run retail operation: "customers" typically feel like they have been left on their own to ferret out where to go and what to do. Their available choices often appear unclear and confusing; while attempting to figure out how to do the "right" thing (pay what they owe), they are met with numerous temptations to do wrong (cheat or exaggerate, at least a little). . . . "Sales" (tax revenues, to be exact) are way down, but the customers remain angry at the IRS rather than pleased with their ability to pay less than they should. . . .

Joshua D. Rosenberg, *A Helpful and Efficient IRS: Some Simple and Powerful Suggestions*, 88 KY. L.J. 33, 35–37 (1999–2000) (emphasis in original).

94. Kent W. Smith, *Reciprocity and Fairness: Positive Incentives for Tax Compliance*, *in* WHY PEOPLE PAY TAXES 223, 227, *supra* note 23.

95. *See id.* at 224–25 (stating that both concepts are positive actions intended to increase taxpayer compliance).

96. *See id.* ("[T]he government has an ethical responsibility to assist taxpayers in meeting their tax reporting obligations . . . "). The scale for "responsive service" consisted of five questions asking those responding to the survey to rate the IRS in comparison to financial institutions and federal government agencies. *Id.* at 230–31.

97. *See id.* at 224 (stating that procedural fairness includes the opportunities given taxpayers to tell their side of the story, how fair the IRS is to taxpayers, the correctability of decisions, and how equitably and consistently individuals are treated); *see also id.* at 231 (listing survey items related to procedural fairness). The "procedural fairness" scale was based on four questions focusing on such things as IRS procedures and practices and the honesty of IRS employees. *Id.* Smith argues that responsive service by a tax collector is probably a precondition to procedural fairness. *Id.* at 228. His examination of IRS survey data found that likely to be the case. *See id.* at 242.

IRS. For the same reasons, the tone of IRS communications also may affect taxpayers' perceptions of the IRS.[98]

It seems intuitively plausible that such cooperative techniques as responsive service and procedural fairness might affect tax compliance, but is the argument borne out by empirical evidence? Section A of this Part discusses the available evidence on tax collector service to taxpayers. Section B discusses procedural fairness. Section C considers the tone of letters sent to taxpayers.

A. Service

One of the changes brought about by the process of IRS reform was the now-standard reference to taxpayers as "customers" of the IRS.[99] This nomenclature actually began in the 1980s with then-Commissioner Larry Gibbs[100] as part of a focus on private sector management concepts.[101] Accordingly, the reference to "customers" seems to derive

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98. *Cf.* George Guttman, *Customer Service: the IRS's Last Name*, 97 TAX NOTES 454, 454 (2002) ("For whom are the IRS letters intended—taxpayers or tax practitioners? If the former, the letters and attachments are probably beyond most taxpayers' comprehension. Although I have some knowledge of tax, I had to read the nine pages [of a particular letter] twice to understand what it meant.").

99. The word choice seems odd. A "customer" is "one that purchases a commodity or service." Merriam-Webster Dictionary, *available at* http://www.m-w.com/cgi-bin/dictionary. What does the public purchase from the IRS? *See* James A. Guthrie, *Taxpayers Aren't "Customers," Attorney Says*, 82 TAX NOTES 200, 200 (1998) (arguing that the IRS's practice of referring to taxpayers as "customers" is offensive to both taxpayers and tax professionals); *House Passes IRS Reform Bill* (Nov. 5, 1997), LEXIS, 97 TNT 222–39 ("It is . . . preposterous to refer to victims as customers. Taxpayers are no more customers of an organization providing a service than the man in the moon. This type of wording is nothing more than the newspeak of which Orwell wrote.") (remarks of Rep. Paul).

> The Australians dislike the popular IRS reference to taxpayers as "customers" because, as the ANAO [Australian National Audit Office] recently observed, the word client "better reflects the fact that they have tax obligations which they meet through their dealings with the ATO [Australian Taxation Office] and that their interaction is largely on an involuntary basis."

Ryan J. Donmoyer, *Restructuring the Tax Collector, Aussie-Style*, 78 TAX NOTES 295, 296 (1998).

100. *See Despite Efforts to Better Serve Taxpayers, Many IRS Employees Receive Abuse at Hands of Dissatisfied "Customers"*, (Mar. 24, 1988), LEXIS, 88 TNT 66-20 [hereinafter *Dissatisfied "Customers"*] ("Until 1986, no IRS commissioner had ever referred to taxpayers as 'customers.' However, since taking the reigns of the Service two years ago, Lawrence B. Gibbs has made high quality 'customer service' chief among his initiatives.").

101. *See Professional Employees, Taxpayer Rights Dominate 1989 Commissioner's Advisory Group Agenda* (Jan. 23, 1989), LEXIS, 89 TNT 17-9 ("IRS Commissioner Lawrence B. Gibbs set the tone for this year's Commissioner's Advisory Group . . . agenda by borrowing heavily from private sector management concepts, such as customer service, quality control, product development, and budget resources, when discussing the IRS' strategic management plan. Speaking on January 18 at the Atlanta Service Center . . . meetings, Gibbs repeatedly referred to the IRS' need

from a focus on "customer service," a more customary phrase than "client service."[102]

Does customer service in tax collection affect compliance? The results of experiments conducted by the Minnesota Department of Revenue and the IRS suggest that better service does not increase compliance.[103] In the Minnesota study, taxpayers in a "service group" were mailed a letter offering them an increased level of service by the Minnesota Department of Revenue.[104] They were sent a special phone

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to provide better service 'to our customers' [taxpayers] to produce a better 'product' [returns processing]."). Senator David Pryor, who ran the IRS hearings of the late 1980s, agreed with the idea. *See* Jack Teuber, *An Interview with Senator David Pryor*, 35 TAX NOTES 636, 638 (1987) ("[Gibbs] keeps talking about wanting to treat the taxpayer as a customer. We want to put that in language. We want it in the statute. We don't want it in some molded, mildewed manual sitting up here in his office, like some kind of a Magna Carta.").

The "customer" nomenclature fell into disuse after Gibbs' tenure. *See Internal Revenue Service Oral History Interview with Mortimer M. Caplin Commissioner, February 7, 1961-July 10, 1964, conducted November 18, 19, and 25, 1991 in Mr. Caplin's Office, Washington, D.C. by Shelley L. Davis, IRS Historian and Kecia L. McDonald, Student Intern* (June 22, 1994), LEXIS, 94 TNT 120-25 ("CAPLIN: . . . Was it Larry Gibbs who kept referring to the taxpayers as customers? (laughs) I don't know if I'd use that word, but he was very successful in what he did. DAVIS: I don't think that's being used quite as frequently anymore."). The government repopularized it in the movement for reform that led to RRA '98. *See Senate Passes Antibrowsing Bill* (Apr. 25, 1997), LEXIS, 97 TNT 80-42 ("During this morning's [April 1997] hearing, Treasury officials kept referring to taxpayers as 'customers'.") (statement of Senator Campbell).

102. *See Dissatisfied "Customers," supra* note 100 (then-Commissioner "[Larry Gibbs] has [stressed] . . . 'customer service' [as] chief among his initiatives."). The comparison to private sector business and the use of customer service principles makes sense in the context of the taxpayer help line, for example. The IRS's help line has traditionally provided notoriously bad service. *See* Rossotti, *supra* note 8, at 1203 ("Typically, . . . operations [in leading businesses] have a level of service such that a customer has a 90 to 95% chance of getting through on a given telephone call. As recently as 1997, the chances of getting through on the IRS toll-free number were 51%."); Mohr, *supra* note 36, at 206 ("testimony from Treasury Inspector General David C. Williams cited IRS customer service as a constant problem. The department reached IRS representatives only 37% of the time while conducting an audit. Further, representatives responded incorrectly to 47% of the questions that were modeled directly from the IRS's List of Frequently Asked Questions."). Yet the use of customer service concepts seems to make little sense outside of the arena in which the IRS actually provides service to taxpayers. As one observer commented, "you don't arrest your customers, do you?" Christopher Bergin, *Tax Analyst Executive Director Addresses IRS's Split Personality*, 95 TAX NOTES 1266, 1267 (2002).

103. An earlier study that made use of interviews of taxpayers conducted by Louis Harris and Associates, Inc. for the IRS, *see* Smith, *supra* note 94, at 229, found that "[r]esponsive service has a strong, positive effect on perceptions of procedural fairness, but it has no effects on other variables net those of procedural fairness . . . . In sum, responsive service appears to be a very important factor affecting perceptions of procedural fairness, perhaps almost a precondition; but the effect of these two positive incentives on other variables is entirely through perceptions of procedural fairness." *Id.* at 242. This study is discussed further below. *See infra* text accompanying notes 136, 139.

104. STEPHEN COLEMAN, MINNESOTA DEPARTMENT OF REVENUE, THE MINNESOTA INCOME TAX COMPLIANCE EXPERIMENT: STATE TAX RESULTS 4 (Apr. 1996), *available at*

number that they could use for assistance with federal as well as state tax returns.[105] Normally, the Minnesota Department of Revenue did not provide assistance with federal taxes.[106] The hours of operation were the same as the hours of operation of the regular help line but represented an increase over prior years.[107] This strategy, unlike certain other strategies tested in the study,[108] had little effect on compliance.[109]

The results of the IRS study are consistent with this—that study found that taxpayer phone calls to the help line had no measurable impact on voluntary compliance.[110] In addition, the IRS study found that its speed of issuing refunds, the volume of the Taxpayer Service office's correspondence with taxpayers, and IRS educational outreach efforts all had no measurable effect on voluntary compliance.[111]

Furthermore, in Minnesota, taxpayers in a "redesigned form" group received an expanded form (two pages instead of one) that facilitated additions and subtractions on the return without the necessity of referring to the instruction booklet or using worksheets.[112] Only taxpayers who had not used a return preparer for their 1993 tax return were sent the special form.[113] The form was sent to a group consisting of taxpayers who had made an addition or subtraction on their 1993 returns and to a

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http://www.taxes.state.mn.us/taxes/legal_policy/research_reports/content/complnce.pdf (last visited August 22, 2003).

105. *Id.*

106. *Id.*

107. *Id.* at 5.

108. The study found that a letter threatening audit was effective with respect to low-and middle-income taxpayers (approximately 96.7% of the population) and a letter making a norms-based appeal had a modest effect overall and a greater effect on certain subgroups. *See id.* at 10, 18–19 (reporting results of study); *see also* Lederman, *supra* note 14 (discussing the Minnesota study in more detail).

109. Coleman, *supra* note 104, at 16. There was a possible effect of service on two subgroups in which taxpayers were in the low-risk, low-income category. One of those two groups resulted in a larger increase in income and reported taxes than the control and the other had the opposite effect, approximately canceling each other out. *Id.* Interestingly, the average refund claimed was larger for this group than for the control group (by $33), which in turn was larger than the average refund claimed by the group that received the norms letter (by $12). *Id.* at 18.

110. Plumley, *supra* note 82, at ¶ 18. In fact, "telephone calls that TPS [Taxpayer Service] handles [had] a weakly significant *negative* impact on income reporting." Plumley, *supra* note 5, at 37 (emphasis in original).

111. Plumley, *supra* note 5, at 39. These are strategies that revenue authorities may be inclined to use. For example, as part of a multi-part strategy, the Massachusetts Department of Revenue "engaged in a public education program with the theme that tax evasion is not a victimless crime and that both honest taxpayers and citizens dependent on government services suffer from tax evasion," Robert M. Melia, *Is the Pen Mightier than the Audit?*, 34 TAX NOTES 1309, 1314 (1987), as well as "a major customer service program, including user-friendly forms, a vastly improved Taxpayer Assistance Bureau, record fast refunds, and outreach programs . . . ," *id.*

112. Coleman, *supra* note 104, at 6–7.

113. *Id.* at 6.

group consisting of those who had not.[114] The revised form also produced little overall difference in additions, subtractions, or taxes.[115] Similarly, an Australian Centre for Tax System Integrity study that involved sending certain taxpayers with rental property a schedule to complete found that sending the schedule made no difference in the magnitude of deductions claimed where the taxpayers were not required to return the schedule.[116] Thus, at least as measured thus far, increased

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114. *Id.*

115. *Id.* at 21. More important with respect to forms may be ensuring that information returns are designed to obtain information that can be matched to taxpayer returns. This is an issue for Schedule K-1, which reports information about "pass throughs" from Subchapter S corporations and partnerships. "The IRS estimates that $1.1 trillion in income goes through passthrough entities." George Guttman, *Why Did the K-1 Matching Program Go Awry?*, 97 TAX NOTES 736, 736 (2002). IRS matching of K-1s to return is more complex than other contexts involving information returns because K-1s list multiple sources of income. *IRS Announces Launch of Enhanced Schedule K-1 Compliance Effort*, 96 TAX NOTES 202, 202 (2002). One of the issues the IRS faces is the inability to match K-1s directly with taxpayer returns because a number of the items on K-1s must be adjusted to take account of various rules applicable to individuals before being reported on returns. Christopher S. Bond, *Bond Release on His Letter to IRS on Schedule K-1 Matching Problems* at ¶ 5 (July 26, 2002), LEXIS, 2002 TNT 144-33. In other words, unlike typical return matching where a mismatch typically reveals an error by the payor or taxpayer, a mismatch may reflect no error on either part because of underlying tax law that affects the proper treatment on the taxpayer's return.

The IRS began a K-1 compliance program in 2002, which involved matching K-1s, along with other information returns, to taxpayers' returns. *See id.* The IRS found in its early results of 65,000 notices sent out by July 2002 that a lot of the misreporting was due to erroneous taxpayer netting of gains and losses. Amy Hamilton, *IRS's K-1 Matching Program Puts 65,000 Taxpayers on Notice* at ¶ 3 (July 10, 2002), LEXIS, 2002 TNT 132-6. However, the IRS suspended the program on August 1, 2002, in response to a request from Senator Kit Bond, following taxpayer complaints. *See* Sheryl Stratton, *IRS Stops Sending K-1 Mismatch Notices*, 96 TAX NOTES 1038, 1038 (2002). The argument made was that there was a potential burden on small business owners, particularly because the IRS could not always tell from return matching whether or not items had been correctly reported. Bond, *supra*, at ¶ 6. This area is therefore ripe for improvement of the return-matching process, which may require modification of the reporting process to reflect on the K-1 what will be shown on the taxpayer's return. Senator Kit Bond

> urged the IRS to help taxpayers report the information from the Schedule K-1 in a manner that will allow the agency to verify its accuracy and enable taxpayers to avoid a matching-error notice in the future. "Ideally, this should be accomplished by modifying Form 1040 so that taxpayers can directly report the information from the Schedule K-1."

Id. at ¶ 7.

The IRS subsequently announced that it would resume the matching program using additional filters during the screening process. *See IRS Resumes K-1 Matching Program, Says Form, Schedule E Will Be Revised*, BNA Daily Tax Report G-1 (Mar. 11, 2003). It also announced "longer term plans" to redesign both Schedule K-1 and Schedule E of Form 1040. *See id.* Part II of Schedule E is used to report income and loss from partnerships and S corporations. Form 1040 Schedule E, *available at* http://www.irs.gov/pub/irs-pdf/f1040se.pdf (last visited Apr. 7, 2003).

116. *See generally* Natalie Taylor & Michael Wenzel, *The Effects of Different Letter Styles on Reported Rental Income and Rental Deductions: An Experimental Approach*, Centre for Tax System Integrity, Working Paper No. 11 (July 2001), *available at* http://ctsi.anu.edu.au/WP11.pdf (reporting

service to taxpayers, in an effort to help them fulfill their compliance obligations, does not seem to affect compliance.

B. Procedural Fairness

An important focus of RRA '98 was procedural fairness to taxpayers.[117] Professor Eric Posner has argued that taxpayers may use tax compliance as a "signal," that they will cooperate with others.[118] As part of that argument, he has argued that the government can serve as a focal point for that signaling—establishing that tax compliance, not noncompliance, is what good types do—by indicating that the government itself has a low discount rate (that is, a long-term view).[119] Accordingly, he has argued that taxpayer rights legislation such as RRA '98 is a way in which the government not only signals its own cooperation but also serves as a focal point for private signaling:[120]

> Very generous, even wastefully generous, procedures are signals that IRS officials, or their political superiors, belong to the good type. The more wasteful the procedures are, the better. Face-to-face contact, hand-holding,

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on an experimental study conducted to investigate such effects). This study is discussed further below. *See infra* notes 160–68 and accompanying text.

117. Procedural fairness encompasses "how much opportunity individuals (or other entities) have to tell their side of the issue, how hard the authorities try to be fair to individuals, how correctable decisions are, and how equitably and consistently individuals are treated." Smith, *supra* note 95, at 224. RRA '98 included new "collection due process" procedures as well as other provisions focused on fairness. *See* RRA '98, *supra* note 9, § 3401 (collection due process); *id.* § 1203(b) ("ten deadly sins" of IRS employees); *id.* §§ 3000-3804 (Taxpayer Bill of Rights 3).

118. Posner's signaling model imagines a society in which "[e]ach individual periodically matches up with some other individual in order to engage in a 'cooperative relationship.' A cooperative relationship, which may be commercial, social, or intimate, has the structure of a repeated prisoner's dilemma ('PD')." Posner, *supra* note 17, at 1786. Key to the model is the assumption:

> that players have different time preferences. "Bad types" have high discount rates, meaning that they value future payoffs relatively little compared to current payoffs. "Good types" have low discount rates. The standard result in the repeated PD model is that a necessary condition of cooperation is that both players have a sufficiently low discount rate. Thus, those who consistently cooperate are more likely to develop reputations for being good types, and those who cheat are more likely to develop reputations for being bad types.

Id. at 1786–87.

Because Posner's model assumes that each individual in the society has private information about his or her own time preference, individuals need a way to convince others that they have a low discount rate, in order to get others to enter relationships with them. "Signals" are costly, observable behaviors that provide no benefit to the signaler other than providing information and therefore are more reliable than cheap talk. *Id.* at 1787.

119. *Id.* at 1792.

120. *Id.* at 1799.

> generous rights to appeal, restrictions on the use of confidential records, and other procedures—even, or especially, if tending only to hamper the IRS without giving the taxpayer concrete benefits—create warm feelings of trust in the heart of the taxpaying citizen. These procedures show straightforwardly that the government is willing to sacrifice short-term gains, which can only be true of a government with a low discount rate.[121]

Professor Posner's signaling argument has been widely criticized, both with respect to tax compliance[122] and more generally.[123] The use of tax compliance as a signal seems particularly unlikely because of the legal protection afforded tax returns and return information[124] and the lack of any norm of disclosing to others in business negotiations, for example, tax returns (let alone the supporting documentation necessary to corroborate the reporting).[125] Given the uselessness of tax compliance as a signal, the government's wastefulness of resources in a demonstration of cooperation with taxpayers should be similarly useless to spur taxpayer "good type" behavior.

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121. *Id.* at 1800; *cf.* Daryl J. Levinson, *Making Government Pay: Markets, Politics, and the Allocation of Constitutional Costs*, 67 U. CHI. L. REV. 345, 347–48 (2000) (noting that governments do not necessarily act like private firms with respect to costs and benefits).

In contrast to Posner's theory, Kent Smith hypothesized that "[c]itizens . . . are more likely to take their taxpaying obligations seriously if they perceive that the state does also. A primary indicator of the state's interest is its concern with detecting and punishing noncompliance." Smith, *supra* note 94, at 240 fig. 1, 241. Smith's analysis of survey data found that a higher belief in the perceived likelihood that small tax cheaters would be caught decreased the normative acceptability of underreporting. *Id.* at 244 fig. 2, 245. *See also* Lederman, *supra* note 14 (arguing that enforcement is required to sustain compliance norms).

122. *See* Lederman, *supra* note 14; Kahan, *supra* note 17; Russell Hardin, *Law and Social Norms in the Large*, 86 VA. L. REV. 1821 (2000).

123. *See, e.g.*, Steven A. Hetcher, C*yberian Signals*, 36 U. RICH. L. REV. 327, 327 (2002) (testing "Posner's theory by examining how well it explains the emergence of Web site privacy norms" and concluding that the "new norms are not the best understood as collections of signals."); Kahan, *supra* note 17, at 368 (arguing that Posner's model fairs poorly under the theories of behavior realism, political feasibility, and moral acceptability); Paul G. Mahoney, *Norms and Signals: Some Skeptical Observations*, 36 U. RICH. L. REV. 387, 405 (arguing that Posner's theory is too broad and thus is less convincing as an explanation for specific situations); Tracey L. Meares, *Signaling, Legitimacy, and Compliance: A Comment on Posner's Law and Social Norms and Criminal Law Policy*, 36 U. RICH. L. REV. 407, 421 (arguing that Posner's theory is incomplete with regard to "criminal law policy where it is most needed—addressing the racial dynamics of criminal punishment and crime reduction in high-crime neighborhoods").

124. *See* I.R.C. §§ 6103, 7431.

125. *See* Kahan, *supra* note 17, at 379 ("[A]nyone who showed up at a commercial negotiation eager to display his or her latest tax returns would probably be regarded not as a trustworthy business partner but as some kind of freak.").

Yet, the perceived fairness of IRS procedures may affect taxpayer attitudes to the IRS and perhaps thereby affect tax compliance.[126] Professor Posner further argues that we can

> imagine how government officials would behave if they did not have to send signals. They would presumably raise revenues using the most efficient tax system available. Such a system might not resemble the one we have today, for tax collectors probably would dispense with due process, politeness, and evenhandedness. More generally, "good tax-collecting behavior" is maintaining confidential information, refraining from threats and intimidation, keeping the tax payment process as simple as possible, and avoiding intrusion as much as possible.[127]

In fact, it is unlikely that the government would succeed in dispensing with due process and fairness for very long. Citizens tend to respond to enforcement that they deem overzealous by protesting or rebelling, impeding tax collection.[128] The televised IRS hearings, which included "horror stories" told by taxpayers,[129] are an example of an effort, coordinated by Congress, to enact legislation restricting aspects of tax collection.[130] Taxpayers are also quick to respond to what they deem

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126. *See* Karyl A. Kinsey, *Deterrence and Alienation Effects of IRS Enforcement: An Analysis of Survey Data*, *in* WHY PEOPLE PAY TAXES 261, *supra* note 23 (citing and discussing literature); *cf.* TOM R. TYLER, WHY PEOPLE OBEY THE LAW 40, 64–68, 172–73 (1990) (stating that legitimacy of authority impacts self-reported compliance with laws such as speeding, driving while intoxicated, and shoplifting, and that procedural fairness is key in maintaining legitimacy); Gary E. Bolton et. al., *Fair Procedures: Evidence from Games Involving Lotteries*, (2000) (Working Paper), *available at* http://papers.ssrn.com/paper.taf?abstract_id=254871 (providing evidence from experimental games that a fair procedure can substitute for a fair outcome).

127. Posner, *supra* note 17, at 1799.

128. *See* Smith, *supra* note 94, at 227 ("authorities' unresponsive, disrespectful, and unfair treatment of taxpayers fosters disrespect for and rebellion against tax authorities and tax laws."). The paradigm developed by Yoram Barzel supports this notion. *See generally* YORAM BARZEL, A THEORY OF THE STATE: ECONOMIC RIGHTS, LEGAL RIGHTS, AND THE SCOPE OF THE STATE (2002). Although Barzel does not address taxes, the idea in the tax context is that the sovereign, who seeks to maximize his wealth, must strike a balance that will optimize revenue, given the tax system and enforcement costs. Under-enforcement will not produce as much revenue as is possible, as evasion will not be optimally detected or deterred but over-enforcement will result in resistance by taxpayers.

129. *See supra* notes 44–45, and accompanying text.

130. *See* dust jacket of ROTH, JR. & NIXON, *supra* note 45 ("In 1997, [Senator] William Roth spearheaded the most extensive tax collection reform effort in modern history. He initiated an investigation into the IRS and chaired congressional hearings that uncovered horrifying stories of abuses against taxpayers that shocked the nation. The legislation that resulted—the Internal Revenue Service Restructuring [sic] Act—which passed the Senate unanimously in 1998—has ushered in what *The New York Times* called 'the most sweeping changes in decades to an agency whose very function has long made it the most reviled in government.'").

violations of the "good tax-collecting behavior"[131] of protection of confidential information.[132]

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131. Posner, *supra* note 17, at 1799.

132. The federal government periodically has enacted laws that required publicity of tax returns or return information, often with the purpose of discouraging tax avoidance or evasion. MARK H. LEFF, THE LIMITS OF SYMBOLIC REFORM: THE NEW DEAL AND TAXATION, 1933–1939 68–69 (1984); Carolyn C. Jones, *Class Tax to Mass Tax: The Role of Propaganda in the Expansion of the Income Tax During World War II*, 37 BUFF. L. REV. 685, 689–90 (1989); Richard D. Pomp, *The Disclosure of State Corporate Income Tax Data: Turning the Clock Back to the Future*, 22 CAP. U. L. REV. 374, 378–406 (1993); *see generally* Marjorie Kornhauser, *More Historical Perspective on Publication of Corporate Returns*, 96 TAX NOTES 745 (2002). Typically, taxpayers objected and the law in question was quickly repealed. *Id.* at 745; *see also* Leff, *supra*, at 70 (discussing repeal of "pink slip" provision).

Today, the Code provides strict protection of all aspects of a taxpayer's "return information," broadly defined. *See* I.R.C. §§ 6103, 7213, 7431. In fact, the broad language of section 6103 sparked litigation over whether press releases publicizing such things as specific criminal tax convictions violate section 6103 even if they contain only information already in the public record. *See, e.g.*, Rice v. United States, 166 F.3d 1088 (10th Cir. 1999); Johnson v. Sawyer, 120 F.3d 1307 (5th Cir. 1997); *see also* Mallas v. United States, 993 F.2d 1111 (4th Cir. 1993) (reports to tax shelter investors of criminal tax convictions without mentioning reversal of those convictions); Barnes v. United States, 1991 U.S. Dist. LEXIS 21633 (W.D. Pa. 1991) (press release after grand jury indictment of taxpayer); Lampert v. United States, 854 F.2d 335 (9th Cir. 1988) (variety of press releases in consolidated cases). Section 6103 does not explicitly contain a "public record" exception but some courts have found one, at least in some contexts. *See* Rowley v. United States, 76 F.3d 796 (6th Cir. 1996) (filing of notice of federal tax lien); Schrambling Accountancy Corp. v. United States, 937 F.2d 1485, 1489–90 (9th Cir. 1991) (same); *Lampert*, 854 F.2d at 338 ("Once tax return information is made a part of the public domain, the taxpayer may no longer claim a right of privacy in that information."). Others have carved out an exception where the direct source of the information was the public record. *See, e.g.*, *Rice*, 116 F.3d 1088 (10th Cir. 1999) (source of information was IRS press release); Thomas v. United States, 890 F.2d 18, 20 (7th Cir. 1989) (source of information was Tax Court opinion, so there was no violation of section 6103); *cf. Johnson*, 120 F.3d, at 1321 n.1 ("[w]e are not holding that the IRS, or any other federal agency, is prohibited from publishing the contents of a public record, such as a judicial opinion, . . . *provided it is the public record that is the immediate source*.") (citation omitted) (emphasis in original). For further discussion of this issue, *see generally* Stephen W. Mazza, *Taxpayer Privacy and Tax Compliance*, 51 U. KAN. L. REV. 1065, 1105 (2003).

The idea of disclosure of tax returns periodically resurfaces. *See, e.g.*, Marc Linder, *Tax Glasnost For Millionaires: Peeking Behind the Veil of Ignorance Along the Publicity-Privacy Continuum*, 18 REV. OF L. & SOC. CHANGE 951, 977 (1990-91) (proposing disclosure of millionaires' returns). Most recently, it was proposed for corporations, which is not surprising in light of the spate of corporate accounting scandals. Senator Charles Grassley and others argued that corporate taxpayers should be required to disclose their returns in order to shed light on tax/accounting discrepancies. *See Grassley Raises Public Disclosure of Some Corporate Tax Returns* (July 8, 2002), LEXIS, 2002 TNT 131-16 (discussing the disclosure of corporate tax returns); Alan Murray *Companies Should Close Credibility Gap in Books*, THE WALL ST. J., July 2, 2002; *see also* Sheryl Stratton, *Closing the Credibility Gap by Disclosing Corporate Returns*, 96 TAX NOTES 322, 322 (2002). Professor Theodore Sims took it further, and, arguing that disclosure could be used to discourage tax evasion by corporations, suggested private enforcement encouraged by the payment of bounties by corporate taxpayers for each deficiency sustained. Theodore S. Sims, *Corporate Returns: Beyond Disclosure*, 96 TAX NOTES 735, 736–37 (2002) (discussing Sims' proposal). His article sparked a debate. *See* Allen D. Madison, *Don't Publicize Corporate Tax*

With respect to areas of law other than tax compliance, Tom Tyler has shown that perceptions of procedural fairness impact compliance,[133] although the impact may be attenuated.[134] Given those findings and evident taxpayer willingness to oppose strongly perceived procedural *un*fairness on the part of the IRS, it seems likely that procedural fairness may impact tax compliance or at least normative commitments to compliance.[135] Two studies suggest that the latter relationship exists. A study by Kent Smith found evidence that a higher level of perceived procedural fairness correlated with a lower normative acceptability of tax evasion.[136] Similarly, Karyl Kinsey found that hearing from other people reports of unfair treatment by the IRS increased taxpayers' intentions of future noncompliance.[137]

To what extent does increased acceptability of tax evasion or the intention not to comply correspond to actual noncompliance?[138] Neither

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Returns or Privatize Enforcement, 22 ABA Tax Sec. News Q. 15 (2002); Theodore S. Sims, *Private Auditing Makes Sense*, 22 ABA Tax Sec. News Q. 17 (2002).

133. *See generally* Tyler, *supra* note 126 (discussing why Americans generally obey the law).

134. *See* ALLEN LIND & TOM R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE, 80–81 (discussing Tyler's Chicago study and stating, "[b]ecause compliance is affected only weakly by legitimacy, which itself is only moderately affected by procedural justice judgments, the procedural justice to compliance causal chain is not strong. The erosion of obedience to law just posited is supported by the data, but it is likely to be a gradual erosion.").

135. Occasionally, an attempt at procedural fairness may have negative side-effects. An example is the "third party contact" provision of RRA '98 that requires the IRS to notify the taxpayer before contacting a third party about the taxpayer's tax liability. I.R.C. § 7602(c); RRA '98, *supra* note 9, § 3412. As discussed above, the IRS uses information return matching to check compliance. *See supra* text accompanying notes 24–26. Unfortunately, any mismatch between an information return and a taxpayer's return does not tell the IRS whether there is an error on the taxpayer's return. For example, it is possible that the information return is incorrect (such as mistaken in amount). *E.g.*, Portillo v. Comm'r, 932 F.2d 1128 (5th Cir. 1991) (provider of late 1099 form could not substantiate $21,380 of payments allegedly made in cash that the taxpayer denied receiving).

A logical approach for an IRS agent working on a mismatch would be to contact the payor to verify that the payor believes the information reported to be correct. IRS, *Substitute for Return May Consider Partnership Income, Ignore Deductions* at n.2 (Oct. 22, 2001), LEXIS, 2001 TNT 204–23. However, given the third party contact provision, the IRS is required to contact the taxpayer. Once the IRS contacts the taxpayer, it is more efficient for the IRS to question the taxpayer about the mismatch. This may create ill-will where the error is the payor's rather than the taxpayer's.

136. *See* Smith, *supra* note 94, at 243 tbl. 2, 244 fig. 2, 245.

137. Kinsey, *supra* note 126, at 281.

138. A study by Harold Grasmick and Wilbur Scott found that a higher percentage of people admitted the possibility of future noncompliance with tax laws than admitted past noncompliance, but the reverse was true for theft. *See* Harold G. Grasmick & Wilbur J. Scott, *Tax Evasion and Mechanisms of Social Control: A Comparison with Grand and Petty Theft*, 2 J. ECON. PSYCH. 213, 220 (1982); *cf.* Marco R. Steenbergen et al., *Taxpayer Adaptation to the 1986 Tax Reform Act: Do New Tax Laws Affect the Way Taxpayers Think About Taxes?*, *in* WHY PEOPLE PAY TAXES 10–11 & fig. 1, *supra* note 23 (discussing and illustrating a "tax schema" that "assumes that personal, social, and legal inhibitors affect a taxpayer's commitment to comply, which in turn affects compliance.").

the Smith study nor the Kinsey study reported a direct relationship between perceived procedural fairness and noncompliance.[139] A study by John Scholz and Mark Lubell using survey data found that greater "trust in government" corresponded to significantly lower self-reported noncompliance.[140] However, that study did not isolate procedural fairness; the two statements used in the studys survey were broad ones from national election surveys ("you can generally trust the government to do what's right" and "dishonesty in government is pretty rare"),[141] so the results are not directly on point.[142]

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139. Kinsey's study appears not to have tested this. *See generally* Kinsey, *supra* note 126. Her forward-looking compliance variable related to stated intentions. *See id.* at 266. Smith's study found no effect of procedural fairness on his variable for noncompliance, which consisted of self-reports of underreporting of income in the previous five years, *see* Smith, *supra* note 21, at 235). *See* Richard Lempert, *Commentary on Kent W. Smith, Reciprocity and Fairness: Positive Incentives for Tax Compliance*, *in* WHY PEOPLE PAY TAXES 225, *supra* note 23; *see also id.* at 240 fig. 1 (not hypothesizing a direct relationship); *id.* at 243 tbl. 2 (not reporting having tested for such a relationship); *id.* at 244 fig. 2 (not reporting any such relationship); *but cf. id.* at 241 ("I am including [self-reported underreported income] to explore whether procedural fairness and the other variables in the expanded model have direct effects on underreported income net those of opportunity, likelihood of catching small cheaters, and the acceptability of cheating.").

140. John T. Scholz & Mark Lubell, *Trust and Taxpaying: Testing the Heuristic Approach to Collective Action*, 42 AM. J. POL. SCI. 398, 404, 409 tbl. 1 (1998).

The survey was conducted in 1988 and focused on the previous three years. *Id.* at 402–03. The questions posed did not distinguish between unintentional noncompliance (presumably discovered later) and intentional tax evasion. *Id.* The questions were framed in terms designed to reduce response bias resulting from the lack of social acceptability of tax evasion. *Id.* at 402. Thus, the answer choices were "'definitely did (report all income)' through 'probably did' and 'probably did not.' To 'definitely did not'" *Id.* For the same reason, any answer other than "definitely did" (report honestly) was recorded as noncompliance. *Id.* The authors "presume" that the survey answers do not reflect unintentional noncompliance. *Id.* at 403 n.2. However, that is impossible to tell from the data. *Cf.* Lempert, *supra* note 139, at 252 (critiquing a similar four-point scale, stating, "I have the nagging feeling that . . . 'probably have not' [omitted even a minor amount of reportable income] is a denial equivalent to 'I am only slightly pregnant'" and pointing out that unintentionally omitted items may be discovered by a taxpayer in the course of preparing a subsequent return and comparing it to the prior one).

The authors also found that the measured level of noncompliance corresponded to a measure from the 1985 TCMP. Scholz & Lubell, *supra*, at 403 n.2. That measure used as the numerator returns reflecting underreporting less those reflecting overreporting, on the assumption that overreporting is unintentional and unintentional noncompliance is randomly distributed. *See id.*; Karyl A. Kinsey, *foreword* to SURVEY DATA ON NONCOMPLIANCE: A COMPENDIUM AND REVIEW, at 1 (American Bar Foundation, Working Paper No. 8716). However, the results of taxpayer surveys suggest that a substantial number of taxpayers intentionally fail to take deductions to which they are entitled. Kinsey, *supra*, *Foreword* at 1, 21. In addition, unintentional noncompliance may not be randomly distributed because poor recordkeeping could result in bias toward underreporting. *Id*. at 6 n.3. Kinsey reports that IRS personnel expressed doubts about the validity of the approach of subtracting returns with overreporting from those with underreporting. *Id. Foreword* at 2.

141. *See* Scholz & Lubell, *supra* note 141, at 404. The discussion of the use of these questions stated, "[t]he heuristic model suggests that trust in government serves as very rough proxy for [sic] ratio of tax costs to public goods benefits that [sic] is so difficult to evaluate for federal income tax."

An Australian study compared the filing and payment compliance with respect to "Activity Statements"[143] of recipients of a standard letter with recipients of letters designed to reflect two different types of procedural fairness.[144] One set of letters focused on "informational justice"—the provision and transparency of explanations about

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Id. The "ratio of tax costs to public goods benefits" should relate to "distributive justice" rather than procedural fairness. *See* Steenbergen et al., *supra* note 138, at 15 (defining "distributive justice" as "the fairness of outcomes, which include both rewards or resources and burdens or responsibilities" and distinguishing this from procedural fairness).

142. The study involved survey data from a project focusing on the effects of the Tax Reform Act of 1986 on "taxpayer beliefs, attitudes and behavior." Scholz & Lubell, *supra* note 140, at 401. It included a question for "procedural fairness of tax policy." *See id.* at 404–05 n.4 ("Another question [sic] to tap procedural fairness of tax policy asked how well 'people of your income group' were represented when Congress was considering the law."). However, procedural fairness with respect to the passage of legislation is very different from procedural fairness in enforcement of the laws.

A study on the effects of substantive unfairness in law on noncompliance raises questions about the effects of perceived substantive unfairness in tax law on the commitment to tax compliance. Professor Janice Nadler conducted an experiment that found that exposure through newspaper stories to an emphasis of the unfairness of laws relating to civil forfeiture, income taxes, or landlord searches of tenants' apartments affected college students' stated willingness to drive while intoxicated, park in a no-parking zone, fail to pay taxes, illegally copy software, speed, drink alcohol although underage, and take office supplies home for personal use. Janice Nadler, *Flouting the Law: Does Perceived Injustice Provoke General Non-Compliance?* at 11–13 (Northwestern Univ. School of Law, Law and Economics Research Paper No. 02-9, Apr. 1, 2002), *at* http://ssrn.com/abstract_id=353745 (last visited August 17, 2003). The study reported that the exposure to unfairness in one set of laws increased the willingness to violate unrelated laws. *Id.* at 15. Tax laws were the only laws included in both parts of the study. Despite this correlation, participants exposed to unfairness in the law were not more willing to violate tax laws than those exposed to the versions of the newspaper stories emphasizing fairness. *Id.* at 29 n.49. Surprisingly, willingness to comply with tax laws was the only criminal behavior tested that did not show the expected correspondence. *Id.* at 14 fig. 1, 29 n.49. Professor Nadler suggests that the unfairness "priming" may have been ineffective with respect to tax laws because the study participants were aware of the similarity between the news story and the tax compliance question. *Id.* at 29 n.49. However, in response to her exit questionnaire, participants stated that they had participated in two studies and that the first study did not affect their judgments in the second study. *Id.* at 13. Professor Nadler also notes that the study participants were college students who likely had little experience with filing tax returns. *Id.* at 29 n.49.

143. Activity Statements are tax returns that businesses that are liable for the Goods and Services Tax (GST) use to report their tax liabilities. *See* Michael Wenzel, Centre for Tax System Integrity, *Principles of Procedural Fairness in Reminder Letters: An Experimental Study*, 5 (Working Paper No. 42, Dec. 2002) [hereinafter Wenzel, *An Experimental Study*], *at* http://ctsi.anu.edu.au/UP.Wenzel.reminder.doc (last visited Apr. 7, 2003) (stating that "Business Activity Statements (BAS) have to be used by businesses to report on, next to other things, GST and/or PAYG [Pay As You Go] installments payable to the Tax Office. Installment Activity Statements (IAS) are required for PAYG installments only.").

144. *See generally id.* The study was preceded by a prestudy on economics students that tested the perceived fairness of the letters and hypothetical compliance. *See generally* Michael Wenzel, Centre for Tax System Integrity, *Principles of Procedural Fairness in Reminder Letters and Awareness of Entitlements: A Prestudy* (Working Paper No. 10, June 2001), *at* http://ctsi.anu.edu.au/WP10.pdf. (last visited August 22, 2003). Interestingly, the prestudy did not find any impact of the letters on hypothetical compliance. *Id.* at 17.

procedures and decisions[145]—and another set concerned "interpersonal justice,"[146] which refers to "politeness and respect, sensitivity to people's feelings and consideration of their circumstances."[147] The study found that letters reflecting a format focused on procedural fairness had a modest effect on filing compliance with respect to individual taxpayers.[148] However, for entities, "the reference to an interpersonal right tended to have a positive impact, but the combination of informational message and an informational right being made salient was counterproductive."[149] With respect to payment compliance, the study found some evidence that, with respect to individual taxpayers, the informational fairness letter that also referenced principles of informational rights increased compliance, but the opposite was true for entities.[150]

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145. Wenzel, *An Experimental Study*, *supra* note 143, at 3 (citing Jerald Greenberg, *The Social Side of Fairness: Interpersonal and Informational Classes of Organizational Justice*, *in* JUSTICE IN THE WORKPLACE: APPROACHING FAIRNESS IN HUMAN RESOURCE MANAGEMENT 77–103 (E. Cropanzano ed., 1993).

146. *Id.* at 4 (citing Greenberg, *supra* note 145).

147. *Id.* The experiment involved a total of nine different letters because each of the three letter formats (informational justice, interpersonal justice and the standard letter) were matched with three types of content: a reference to either informational or interpersonal fairness principles discussed in Australia's "Taxpayers' Charter" (which "outlines 'the legal rights and standards taxpayers can expect from the Tax Office,'" *id.* at 4, *citing* Australian Taxation Office "The Taxpayers' Charter" (Canberra: Commonwealth of Australia 1997) at 8), or no reference to fairness principles. *Id.* at 4, 7. Each letter was sent to 500 randomly selected taxpayers that had an overdue "Activity Statement" for the third quarter of 2001. *Id.* at 2, 6–7. Large companies and taxpayers registered with a tax agent or accountant for Activity Statement purposes were excluded from the samples so as to focus on self-preparers. *Id.* at 2, 7. In addition, to minimize confusion, the samples were restricted to "(a) clients had only ever had quarterly obligations; (b) clients had no other AS [Activity Statement] outstanding; (c) clients had only one known concurrent AS obligation." *Id.* at 7. In addition, taxpayers from Western Australia were not included. *Id.*

148. *Id.* at 16. Controlling for background difference of taxpayers, such as previous filing compliance history, letter format had "overall, a marginally significant effect, *Wald* (2) = 4.65, p = .098," and the letter content was not significant. *Id.* at 14.

149. *Id.* at 16.

150. *Id.* at 18, 20. The experiment also tracked telephone calls in response to the letters. With respect to those calls, the study concluded:

> The data on return phone calls indicated some advantages of reminder letters that adopted principles of informational fairness. There tended to be fewer return calls overall when the letter message was informationally fair; fewer excuses and fewer requests for delayed lodgment when an informational right was granted; and fewer accusations when an informational letter matched an informational right. However, the effects were not completely clear and rather suggestive.

Id. at 13.

Another Australian study considered the role of social identity; fair treatment by an authority may matter with respect to a group to which both the authority and the affected person belong.[151] That study found that taxpayers' responses to survey questions[152] indicated that two of the four types of tax compliance behavior questioned,[153] reporting of "extra income" and claiming of deductions, were influenced by taxpayers' perceptions of justice if they identified themselves as part of the Australian community.[154] Overall, the Australian research suggests the possibility that, for individuals, at least with those who identify with the country to which they pay taxes, tax collector efforts at procedural fairness may affect compliance.[155] Research on this issue with respect to IRS contacts of United States taxpayers would be helpful.

C. Tone of IRS Communications

As the Australian study on procedural fairness discussed above suggests, the tone of letters from a tax collector may affect compliance behavior.[156] "After the IRS sends the first contact letter, it often sends a second one that is more stern than the first. It goes out automatically and does not take into account any action a taxpayer may have taken in

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151. *See* Michael Wenzel, *The Impact of Outcome Orientation and Justice Concerns on Tax Compliance: The Role of Taxpayers' Identity*, 87 J. APPLIED PSYCHOL. 629, 631 (2002) [hereinafter *Role of Taxpayers' Identity*] (citing LIND & TYLER, *supra* note 134) (discussing the connection between taxpayer identity and levels of compliance in Australia); *see also* Tyler, *supra* note 126, at 174–76.

152. The survey addressed the 1998–99 tax year and included both yes/no questions, such as "'[a]s far as you know, did you report all the money you earned in your 1998–99 income tax return?'" and questions with answers provided on a five-point scale, such as "[p]eople earn money from many different sources . . . Think about each of the sources of income listed below, and select the response that best describes your 1998–99 income tax return, (1 = *received none*, 2 = *did not declare it*, 3 = *declared some*, 4 = *declared most*, 5 = *declared all*) . . . ." Wenzel, *Role of Taxpayers' Identity*, *supra* note 151, at 644 app. The questionnaire apparently did not distinguish between intentional evasion and unintentional noncompliance (later discovered). The sample size was 7754 Australian citizens on the Australian electoral roll. *Id.* at 632. 7003 surveys were successfully sent and 2040 surveys were turned in. *Id.*

153. The four types of tax compliance behavior asked about were reporting of remuneration income, reporting of extra income, claiming of deductions, and the use of tax minimization strategies. *Id.* at 634.

154. *Id.* at 636, 637. The procedural justice measures were based on responses to statements such as "[t]he Tax Office respects the individual's rights as a citizen," . . . "[t]he Tax Office considers the concerns of average citizens when making decisions," and "[t]he Tax Office gives equal consideration to the views of all Australians . . . ." *Id.* at 645.

155. The report on the study concluded, "[t]he present study yielded some, but largely patchy, evidence for the assumption that procedural justice principles in reminder letters improve levels of compliance with the reminders." *Id.*

156. *See supra* notes 143–50 and accompanying text.

response to the first letter."[157] Theoretically, stern letters may offend compliant taxpayers:

> Like [sic] in the United States, the only contact most Australians have with their tax collector comes when they transmit a return. What [Peter] Simpson [a "second commissioner" of the Australian Taxation Office] wants to change is the tone the government can project when a taxpayer who has been compliant for 30 years or more makes a mistake and gets a stern letter from the taxation office. "People are saying, 'we don't want to be treated like that,'" Simpson said. "We should be able to develop a rating system so that a computer spits out an appropriate letter."[158]

The Australian study involving letters sent to taxpayers with rental property, discussed above,[159] suggests that there may be no single answer with respect to the best tone for communications from a tax collector.[160] In that study, some taxpayers were sent a "soft" letter, focusing on the helpfulness of the Australian Taxation Office, while others were sent a "hard" letter emphasizing the possibility of audit and sanction.[161] The mailings also differed in content. Among other variations, some letters included a rental property schedule to complete and return to the Australian Taxation Office and some contained a schedule that did not have to be returned, so as to see whether government oversight was a factor in increasing compliance.[162]

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157. Guttman, *supra* note 98, at 455.

158. Donmoyer, *supra* note 99, at 297–98.

159. *See supra* text accompanying note 116.

160. *See* Taylor & Wenzel, *supra* note 116, at 26 (generally finding no effect of tone and, in one context, finding mixed results from different tones).

161. *Id.* at 9–11.

> The 'soft' letters began with the sentence 'At the Australian Taxation Office (ATO) we are committed to helping taxpayers to correctly prepare their income tax returns'. The emphasis in these letters was on the role of the Tax Office as being informative and helpful. There was no mention of penalties or audit action. The 'hard' letters began with 'Over the past few years the Australian Taxation Office (ATO) has conducted an extensive review program which has enabled us to collect and analyse rental property income and deductions data. The program has resulted in a substantial number of adjustments to rental property claims.' These letters emphasised that taxpayers could be selected for audit action, and that penalties for non-compliance could be imposed.

Id. at 10.

> The letters were sent in June 2000 to a group of taxpayers that had been sent a schedule to complete in previous years because their compliance appeared questionable and a group that had not previously been sent the schedule. *Id.* at 9, 11.

162. *Id.* at 22.

The study found that taxpayers in the group that was sent a schedule to complete and return claimed fewer deductions than the controls.[163] By contrast, the tone of the letter generally made little difference.[164] However, the study found an interesting interaction that was "marginally significant."[165] For taxpayers who had been sent a schedule to complete in a prior year because they were deemed at risk for noncompliance, the hard letter resulted in fewer claimed rental deductions than the soft letter when the schedule had to be returned.[166] Yet, for that group of taxpayers, when the schedule did not have to be returned, the reverse was true: Those who received the soft letter claimed fewer rental deductions than those receiving the hard letter.[167] The experimenters suggest that either (1) the hard letter was more consistent with the requirement of returning the schedule and a soft letter is more consistent with not requiring the schedule to be returned or (2) when taxpayers felt threatened illegitimately, they claimed more deductions when they felt that they were not under scrutiny.[168]

Thus, the Australian study suggests that tone may not matter or that it may be best for a tax collection agency to adopt a tone suited to the relevant context. The idea that softness on the part of a tax collection agency may impede collection in contexts in which taxpayers are likely to resist collection is intuitively plausible. For example, the failure to pay over "trust fund" taxes (withheld by third party payors and owed to the IRS[169]) is a large and growing problem.[170] Often it is failing

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163. *Id.* at 23. This was true whether they had received a schedule in a prior year or no, that is, it was true for both the "at risk" group and the other group. *Id.*

164. *Id.* at 19, 26. The authors state that the distinction in the tone of the letters that were intended to be "hard" and those intended to be "soft" might not have been as clear as intended. *Id.* at 26. They planned to pretest letters in the next phase of the study. *Id.*

165. It was significant at p = .067. *Id.* at 22.

166. *Id.* at 23.

167. *Id.*

168. *Id.* at 26.

169. These taxes are called "trust fund" taxes because the Code requires employers to hold these amounts in "a special fund in trust for the United States." I.R.C. § 7501.

170. Thirty-five to forty percent of the IRS's delinquent accounts relate to businesses that fail to pay over trust fund taxes. *See* ABA Commission Report, *supra* note 3, at 367. "IRS data show that in 1997, 1998, 1999, and 2000, delinquent employers owed about $3.2, $3.5, $4.4, and $5 billion, respectively, in unpaid employment taxes, penalties, and interest." GENERAL ACCOUNTING OFFICE, TAX ADMINISTRATION: IRS'S EFFORTS TO IMPROVE COMPLIANCE WITH EMPLOYMENT TAX REQUIREMENTS SHOULD BE EVALUATED, GAO-02-92, 1 (Jan. 2002), *at* http://www.gao.gov/new.items/d0292.pdf (last visited August 22, 2003) [hereinafter, TAX ADMINISTRATION: EMPLOYMENT TAX]. It is not clear whether the amounts reported by the GAO reflect possible assertion of the 100% penalty under I.R.C. § 6672 with respect to multiple responsible persons. If the amounts include multiple assertions of the penalty, that would inflate amounts apparently owed because it is the IRS's policy to collect no more than the amount of the delinquent employment taxes. *See* I.R.M. 1.2.1.5.14, P-5-60 (02-02-1993); *see also Sixth Circuit*

businesses that do not pay over the taxes, essentially embezzling them as a way to forestall closing down.[171] The unpaid taxes and penalties quickly snowball, compounding the tax liability.[172] Yet, the IRS's initial notice in a case involving a failure to pay "trust fund" taxes simply asks for an explanation for the delinquency.[173] "If the employer fails to respond to this first notice, IRS sends follow-up notices and may later contact the employer by phone or, eventually, make a personal visit. . . . [T]his entire process can take years for those employers who do not respond. . . ."[174] Trust fund taxes are critical for the federal fisc[175] so the

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Denies Equitable Tolling in Bankruptcy, GLB 200038040, 2000 GLB LEXIS 11, Bulletin No. 478 (Jul. 2000).

President Bush recently increased IRS resources to combat "failure by employers to turn over taxes withheld from paychecks or even to withhold them . . . ." *See* David Cay Johnston, *Budget Gives I.R.S. More Money to Investigate Tax Cheats*, N.Y. TIMES, February 5, 2003, at A17.

171. *See* TAX ADMINISTRATION: EMPLOYMENT TAX, *supra* note 170, at 1. ("[W]hen confronted with a choice between paying necessary operating expenses or depositing employment taxes, struggling businesses may opt to pay business expenses instead of taxes."); ABA Commission Report, *supra* note 3, at 367 ("It is tempting for the business owner in such desperate straits to view employee tax withholdings as an interest-free loan that will be paid back once business turns around."); Slodov v. United States, 436 U.S. 238, 243 (1978) ("the funds accumulated during the quarter can be a tempting source of ready cash to a failing corporation beleaguered by creditors."); *cf.* Guttman, *supra* note 4, at 37 ("Much of the $280 billion [in IRS accounts receivable] is uncollectible because the taxpayers are in bankruptcy and the IRS is unlikely to collect the funds.").

Small businesses are those that experience a quarterly accumulation of funds:

> Employers with the smallest employment tax liabilities pay on a quarterly basis; those with the largest liabilities pay the next banking day; and those with intermediate-sized liabilities pay on a monthly or more frequent basis. Generally, small businesses would tend to be heavily concentrated in the employment tax deposit categories calling for less frequent payments.

TAX ADMINISTRATION: EMPLOYMENT TAX, *supra* note 170, at 2.

In 2000, 19% of employers owed employment taxes quarterly, 52% owed them monthly, and 29% owed the taxes more frequently than monthly. *Id.* at 11 tbl. 1. In 2000, quarterly payments were required for those who owe less than $1,000 in employment taxes each quarter, monthly payments were required for those who owe between $1,000 and $50,000 annually, and payments were due more frequently and depending on the frequency of payments to employees, for other employers. *Id.* at 11. However, beginning January 1, 2001, the threshold for quarterly payments was raised from under $1,000 per quarter to under $2,500 per quarter. *Id.* at 11-12. That stood to increase the portion of employers making quarterly payments to approximately 37%. *Id.* at 12.

172. *See* TAX ADMINISTRATION: EMPLOYMENT TAX, *supra* note 170, at 1–2 (discussing the problems that compounding tax liabilities pose to businesses). There is a time-sensitive late payment penalty, I.R.C. § 6651, a failure to deposit penalty, *id.* § 6656, and interest runs from the day the payment was due, *id.* § 6601(a). Payment ends this cycle but may be impossible for a failing business. This reality increases that the pressure on the IRS to act as promptly as possible but also places it in an extremely difficult situation politically.

173. TAX ADMINISTRATION: EMPLOYMENT TAX, *supra* note 170, at 15–16.

174. *Id.* at 4. Currently, the IRS is very dependent on employer filing of quarterly returns to spot noncompliance: "Although employment taxes for many employers must be paid throughout a

IRS may benefit from taking a sterner approach sooner, at least in some cases.[176]

IV. CONCLUSION

RRA '98 focused primarily on service and procedural reform, not compliance. Not surprisingly, the mandates of the legislation resulted in a shift of IRS resources from enforcement to service.[177] The data included in Part I of this article showed a decline in enforcement activity following passage of RRA '98. However, more important for overall

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calendar quarter, IRS' ability to determine whether employers have paid as frequently as required and in the amounts required is dependent on employers filing the Employer's Quarterly Federal Tax Return (Form 941 return)" because the IRS matches its deposit records with the information reported on the return. *Id.* at 2. An employer's failure to file a Form 941 significantly delays the IRS's initial contact, extending it from on average 5 weeks after the delinquency arises to approximately 14-28 weeks after the delinquency, with the variation due to the fact that the IRS's workload varies during the year. *Id.* The increase over the 5-week turn-around time is because the IRS processes filed returns first. *Id.* at 3. Therefore, the IRS may take longer to pursue those least inclined to pay the overdue taxes.

175. "The payment of employment taxes accounts for over $500 billion of the federal budget and is a large part of our voluntary tax system." DEPARTMENT OF THE TREASURY, MAJOR MANAGEMENT CHALLENGES FACING THE INTERNAL REVENUE SERVICE, FISCAL YEAR 2001, *available at* http://www.treas.gov/tigta/armey-fy01-challenges.pdf (last visited September 16, 2003). Employment taxes comprise about a third of total tax collections. MANAGEMENT ADVISORY REPORT: COMPLIANCE, *supra* note 67, at 12.

176. It may also help for the IRS to increase the speed of enforcement when employer payments are late. The ABA Commission on Taxpayer Compliance recommended this in 1988. *See* ABA Commission Report, *supra* note 3, at 332, 368 (recommending early enforcement methods in order to reinforce compliance). Admittedly, this is very hard—perhaps politically impossible in the current climate—if collecting the taxes will shut down the business. "There is a tendency for the media to depict the Service in such cases as somehow victimizing the business and causing it to fail. But, in fact, the business had already failed; the theft of employee withholdings only postpones the day of reckoning, at substantial cost to the public treasury." *Id.* at 367. To collect taxes, the IRS cannot be the creditor exerting the least pressure on the business. James Andreoni has argued that "[t]ax evasion . . . may be a high-risk substitute for a loan." James Andreoni, *The IRS as Loan Shark: Tax Compliance with Borrowing Constraints*, 49 J. PUB. ECON. 35, 36 (1992). However, if the IRS poses a toothless threat, the risk is not high at all. Faster action could prompt failing businesses to take more appropriate actions, such as cutting expenses. *Cf.* ABA Commission Report, *supra* note 3, at 367 ("Noncompliant taxpayers are usually failing businesses that cannot obtain credit and are unwilling to make hard business decisions such as cutting expenses, laying off workers, or declaring bankruptcy."). A general education campaign about the teeth in employment tax enforcement might also discourage using the IRS as an involuntary lender.

Another possible way to increase compliance with respect to the payment of trust fund taxes would be for Congress to require more frequent employment tax payments, particularly for small or start-up businesses. Of course, increasing the frequency of payments also increases compliance costs, which can be a particular hardship for these businesses.

177. *See* Murphy & Higer, *supra* note 58, at 872 n.19 ("[F]rom 1990 to 2000, the number of full-time equivalent employees at the IRS decreased from 111,962 to 97,071.") (citing IRS Oversight Board Annual Report (Jan. 2002), LEXIS, 2002 TNT 22-24); *see also supra* note 66-68 and accompanying text.

revenue than the direct effect of enforcement activity on enforcement revenue is the effect, if any, on voluntary compliance.[178]

The data in Part I show that total federal revenue steadily increased between 1997 and 2001[179] and outpaced inflation.[180] However, those figures do not show what portion of taxes due actually were collected. If taxes due increased at a greater rate than taxes collected, then compliance rates have declined. Once the results of the new National Research Program are analyzed,[181] there will be current data on voluntary compliance that can be compared to the data from 1988, the last TCMP, the source of the estimate of an 83% overall rate of voluntary compliance.

In the meantime, there is some—perhaps limited—cause for concern. First, the General Accounting Office reported that between 1996 and 2001, "the number of apparent individual nonfilers increased about three and one-half times faster than the individual tax filing population."[182] Yet, other data show that rates of timely filing by individuals increased steadily between 1996 and 2000.[183] Second, the IRS Oversight Board conducted a survey in August 2001 that contained two questions from a 1999 IRS survey and three new questions. One of the repeated questions was "how much, if any, do you think is an acceptable amount to cheat on your income taxes?" In 1999, 87% responded "not at all" while in 2001, only 76% chose that answer.[184] The importance of these

178. *See supra* text accompanying note 34.

179. *See supra* text accompanying notes 76–77.

180. $1,505 billion in 1997 is equivalent to approximately $1,661.15 billion in 2001. *See* Columbia Journalism Review Dollar Conversion Calculator, *at* http://www.cjr.org/resources/inflater.asp (last visited Apr. 2, 2003). The IRS actually collected $1,902.1 billion in 2001. *See supra* text accompanying notes 76–77.

181. *See* Brown & Mazur, *supra* note 13, at 1268 (data from NRP should start to become available to IRS in 2004); Amy Hamilton, *IRS Set to Begin Random Audits of Taxpayers* (Oct. 29, 2002), LEXIS, 2002 TNT 209-1. (In late October, 2002, IRS was preparing to begin the first of the random audits under the NRP, but most of the audits would take during the 2003 filing season).

182. Tax Administration: Continued Progress Modernizing IRS Depends on Managing Risks (May 14, 2002), LEXIS, 2002 TNT 94-17.

183. *See* Brown & Mazur, *supra* note 13, at 1259 (showing increase in rates of timely individual income tax filing from 88.1% in 1996 to 90.7% in 2000).

184. IRS OVERSIGHT BOARD, IRS OVERSIGHT BOARD 2001 ANNUAL REPORT (Feb. 1, 2002), LEXIS, 2002 TNT 22-24 [hereinafter IRS OVERSIGHT BOARD 2001 REPORT]. The answer choices were "Not at all," "A little here and there," "As much as possible," and "Don't know/not sure." *Id.* It is unclear from the Oversight Board's report whether the surveys were given in person, by telephone, or by mail. *Id.* However, the New York Times reported that the survey consisted of 1990 in-person interviews of adults. *As Audits Decline, Fewer Taxpayers Balk at a Bit of Cheating*, N.Y. TIMES Jan. 19, 2002, A11. The margin of error was plus or minus 3 percentage points. *Id.*

results should not be exaggerated,[185] but they are consistent with a possible relationship between decreased enforcement and a weaker normative commitment to tax compliance.

Unfortunately, the media focus on horror stories and the need to "reform" the IRS may suggest to taxpayers that IRS personnel have found that they need to "abuse" taxpayers in order to collect from them. This may tend to suggest that noncompliance is rampant, which, in turn, may tend to undermine normative commitments to compliance.[186] The Congressionally declared need for reform also may breed fear and mistrust of the IRS.[187]

Will the reformed IRS increase the rate of voluntary compliance? Thus far, published studies on the link between tax collector friendliness and compliance have not focused on the effects of RRA '98. The available empirical evidence discussed above does not tend to support a connection between service to taxpayers and compliance.[188] More

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185. The IRS Oversight Board was appropriately cautious about concluding too much from one survey. IRS OVERSIGHT BOARD 2001 REPORT, *supra* note 184. It stated its plan to repeat the survey in 2002. *Id.*

186. *See* Lederman, *supra* note 14.

187. RRA '98 may reflect a fundamental ambivalence about the IRS. On the one hand, we want the IRS to catch tax cheats so that the rest of us do not pay more than our fair share (what former Commissioner Rossotti called "service to all taxpayers"). STRATEGIC PLANS AND BUDGET, *supra* note 49, at 14 (remarks of then-Commissioner Rossotti) (listing "Service to All Taxpayers," as a goal and in that category, "Increase fairness of compliance" and "Increase overall compliance"). On the other hand, we worry about the possibilities of abuse by an agency with such power (which is part of what former Commissioner Rossotti called "service to each taxpayer"). *See id.* (listing "Service to Each Taxpayer" as a goal and among items in that category, "Ensure taxpayer rights are observed").

188. *See supra* text accompanying notes 103–116. In fact, IRS reform may be a way to tie the hands of the IRS so as to increase support for elimination of the federal income tax. *See, e.g.*, STRATEGIC PLANS AND BUDGET, *supra* note 49, at 1 (remarks of Rep. Archer) ("While the IRS Restructuring and Reform Act is landmark legislation, it is only a first step. Ultimately, I believe that the true answer is to provide America with a new tax system—one that is fairer, simpler, less intrusive, less costly, and that creates more economic growth."); 143 CONG. REC. E2306 (daily ed. Nov. 10, 1997) (remarks of Rep. Riley) ("I think a recent Newsweek Magazine article said it best: The IRS has too much muscle, too much money, and too little oversight. The agency is out of control and it is not going to fix itself. Only Congress can do that. In my view, we should overhaul—if not eventually abolish—the IRS. Then we should scrap the Tax Code and replace it with one that is fairer and flatter."); 143 CONG. REC. E2319 (daily ed. Nov. 10, 1997) (statement of Rep. Sandlin) ("These reforms [in H.R. 2676] are only the first step in our struggle to reduce the impact of Federal taxes on taxpayer's lives. The real problem is the several thousand page Tax Code, created by Congress, that the IRS attempts to administer. This year alone, Congress added 600 pages to the Code by passing $85 billion in tax cuts. When a tax cut makes the Tax Code more complex, you know it is time to scrap this Code and start over with one that is simple, fair, and understandable."); 143 CONG. REC. E2204 (daily ed. Nov. 7, 1997) (remarks of Rep. Weldon) ("I am proud to support this important legislation [The Internal Revenue Service Restructuring and Reform Act of 1997], but it is only a first step in the critical process of tax reform. We in the Congress must not rest until the tax code is made fairer, flatter, and simpler for the American taxpayer. Americans pay too much in taxes, and are forced to spend too much of their time filing out their returns. A flat tax would both

research is needed on whether there is a relationship between the tone of IRS communications and compliance.[189] However, the literature on procedural fairness suggests a possible link between the perceived fairness of tax collection procedures and tax compliance. Additional research would help show to what extent that applies to the IRS. Yet, regardless of the findings, an important lesson of IRS reform may be that IRS employees should act courteously and professionally in conducting enforcement activities.[190] Certainly overzealous, unprofessional behavior can foment taxpayer resistance.[191]

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reduce the tax burden on working Americans and make the process of paying taxes much simpler. The surest way to bring the IRS under control is to make it less important. A flat tax will help us reach this important goal.").

189. *See supra* text accompanying notes 156–168.

190. This is true in part because some audits uncover no evidence of misreporting and because taxpayers may form their strongest impressions about the IRS from personal interactions with its employees.

191. *See supra* text accompanying notes 128–132.